

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-23649-rdd

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5 In the Matter of:

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7 PURDUE PHARMA L.P.,

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9 Debtor.

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12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

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16 May 1, 2020

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21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: ART

1 HEARING re Ex Parte Motion of the Ad Hoc Group of Non-  
2 Consenting States for an Order Authorizing Examinations of  
3 Certain Financial Institutions Pursuant to Rules 2004 and  
4 9016 of the Federal Rules of Bankruptcy Procedure filed by  
5 Andrew M. Troop on behalf of Ad Hoc Group of Non-Consenting  
6 States (ECF #1019)

7  
8 Limited Objection of The Raymond Sackler Family to the Ad  
9 Hoc Group of Non-Consenting States Rule 2004 Motion (related  
10 document(s)1019) (ECF #1087)

11  
12 Limited Objection of Mortimer Sackler Initial Covered  
13 Sackler Persons to Ex Parte Motion of the Ad Hoc Group of  
14 Non-Consenting States for an Order Authorizing Examinations  
15 of Certain Financial Institutions Pursuant to Rules 2004 and  
16 9016 of the Federal Rules of Bankruptcy Procedure (related  
17 document(s)1019) filed by Jasmine Ball on behalf of Beacon  
18 Company (ECF #1088)

19  
20 STATEMENT OF THE PRIVATE INSURANCE CLASS CLAIMANTS  
21 CONCERNING DISCOVERY DISPUTES BETWEEN OFFICIAL COMMITTEE OF  
22 UNSECURED CREDITORS AND THE SACKLERS AND APPLICATION UNDER  
23 BANKRUPTCY RULE 2004 (related document(s)1019) filed by  
24 Nicholas F. Kajon on behalf of Eric Hestrup, et al. (ECF  
25 #1099)

1 Reply in Support of its Ex Parte Motion of the Ad Hoc Group  
2 of Non-Consenting States for an Order Authorizing  
3 Examinations of Certain Financial Institutions Pursuant to  
4 Rules 2004 and 9016 of the Federal Rules of Bankruptcy  
5 Procedure (related document(s)1019) (Troop, Andrew)(ECF  
6 #1106)

7  
8 The Ad Hoc Group of Non-Consenting States' Letter to the  
9 Honorable Judge Robert D. Drain Regarding Discovery Disputes  
10 Between the UCC and Members of the Sackler Family Filed by  
11 Andrew M. Troop on behalf of Ad Hoc Group of Non-Consenting  
12 States (Troop, Andrew)(ECF #1107)

13  
14 The Official Committee of Unsecured Creditors' Joinder In,  
15 and Statement with Respect to, Reply in Support of Ex Parte  
16 Motion of the Ad Hoc Group of Non-Consenting States for an  
17 Order Authorizing Examinations of Certain Financial  
18 Institutions Pursuant to Rules 2004 and 9016 of the Federal  
19 Rules of Bankruptcy Procedure (related document(s)1106)  
20 filed by Ira S. Dizengoff on behalf of The Official  
21 Committee of Unsecured Creditors of Purdue Pharma L.P., et  
22 al. (ECF #1109)

1 Declaration of Arik Preis in Support of the Official  
2 Committee of Unsecured Creditors' Joinder In, and Statement  
3 with Respect to, Reply in Support of Ex Parte Motion of the  
4 Ad Hoc Group of Non-Consenting States for an Order  
5 Authorizing Examinations of Certain Financial Institutions  
6 Pursuant to Rules 2004 and 9016 of the Federal Bankruptcy  
7 Procedure (related document(s) 1109) filed by Ira S.  
8 Dizengoff on behalf of The Official Committee of Unsecured  
9 Creditors of Purdue Pharma L.P., et al. (ECF #1110)  
10  
11 Ad Hoc Committees Statement Regarding Discovery Disputes  
12 (related document(s) 1019, 1087, 1089, 1088) filed by Kenneth  
13 H. Eckstein on behalf of Ad Hoc Committee of Governmental  
14 and Other Contingent Litigation Claimants. (Eckstein,  
15 Kenneth) (ECF #1111)  
16  
17 Response of The Raymond Sackler Family to The Official  
18 Committee's April 26 Discovery Letter And Objection to  
19 Relief Requested Therein (related document(s) 1089) filed by  
20 Gerard Uzzi on behalf of The Raymond Sackler Family. (ECF  
21 #111)  
22  
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1 Response of Beacon Company to The Official Committee's April  
2 26 Discovery Letter and Objection to Relief Requested  
3 Therein (related document(s)1089) filed by Jasmine Ball on  
4 behalf of Beacon Company. (Ball, Jasmine) (ECF #1113)

5  
6 Reservation of Rights in Connection with Statement and  
7 Application of the Private Insurance Class Claimants  
8 Concerning Discovery Disputes (related document(s)1099)  
9 filed by Gerard Uzzi on behalf of The Raymond Sackler  
10 Family. (ECF #1119)

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1 P R O C E E D I N G S

2 THE COURT: Good afternoon. This is Judge Drain.

3 We're here in In re Purdue Pharma, L.P., et al. This is a  
4 hearing scheduled after a discovery conference held by the  
5 Court and certain of the parties who filed pleadings for  
6 consideration today on discovery issues in these cases.

7 It's an entirely electronic hearing -- I'm sorry -- entirely  
8 telephonic hearing and therefore, in addition to identifying  
9 yourself and your client when you speak first, I may ask you  
10 to do that again later on if I feel that the court reporter  
11 preparing the transcript would not be able to identify you.

12 The transcript will be prepared from the recording  
13 which is the only official recording of this hearing  
14 emanating from Court Solutions. No one else should be  
15 recording this hearing.

16 So with that, I have a motion by the ad hoc group  
17 of nonconsenting states for a Rule 2004 examination of  
18 document production. I think I've read all the pleadings in  
19 connection with it. Why don't we begin with that?

20 MR. TROOP: Thank you, Your Honor. This is Andrew  
21 Troop from Pillsbury Winthrop Shaw Pittman on behalf of the  
22 ad hoc group of nonconsenting states. Your Honor, we're  
23 happy to go in whatever order you'd like. The creditors  
24 committee had asked whether they might be able to go first,  
25 in part given the additional background and context that

1 goes along with their request and their discovery disputes.  
2 But again, we'll do this in any order you'd like, Your  
3 Honor, of course.

4 THE COURT: Well, reading the responses to your  
5 motion, Mr. Troop, it seems like there are only a relatively  
6 small number of issues that remain open so I'd rather start  
7 with your side of things.

8 MR. TROOP: Yes, Your Honor. Thank you. Your  
9 Honor, the ad hoc committee of nonconsenting states filed a  
10 Rule 2004 motion just over three weeks ago on April 7th  
11 seeking to take discovery from financial institutions. Your  
12 Honor, we're here on a compulsory basis because the  
13 voluntary time period during which at least the  
14 nonconsenting states expected that the Sacklers would be  
15 inundating all of us, not only with their own advocacy  
16 presentations but also with underlying primary documents,  
17 was not forthcoming, and that those presentations themselves  
18 at the time they were given and since they were given were -  
19 - it was made clear, Your Honor, that not only the  
20 nonconsenting states but also the creditors committee and  
21 the ad hoc committee as well as other interested parties  
22 would need to be in a position to look at and verify data  
23 and information.

24 And that verification, Your Honor, is not simply  
25 of, you know, what we're told but what we're not told, and

1 I'm not suggesting at all that anyone intends to keep  
2 information or data from anyone. Although that may turn out  
3 to be the case, I don't expect it to be anyone's intention.  
4 And that the effort here was to start the process of doing  
5 the fundamental third-party, independent, non-biased  
6 productions relating to the financial -- the finances of the  
7 Sacklers.

8 And, Your Honor, admittedly there are lots of  
9 individuals and entities with respect to which this kind of  
10 discovery will be required, but that flows from the nature  
11 of the releases that we expect and that have been confirmed  
12 to us by the Sacklers that they seek. Those releases are  
13 not only for estate claims but for third-party non-estate  
14 claims. That in and of itself creates an interesting puzzle  
15 to piece together because while estate claims themselves may  
16 flow -- or not -- but may flow directly from transfers from  
17 the debtors to or for the benefit of the Sacklers or their  
18 enterprises, third-party claims are not so limited as they  
19 relate to the Sacklers and accordingly extremely broad  
20 discovery is required here.

21 The claims that are potentially to be released are  
22 in the billions of dollars, potentially, for estate claims  
23 and trillions of dollars for public entity side claims.

24 THE COURT: Can I interrupt you, Mr. Troop?

25 MR. TROOP: Sure. Of course.

1 THE COURT: I want to focus just on the open  
2 issues as between you and the objectors to the motion which  
3 again, I believe are -- I think there are three of them and  
4 they're pretty narrow at this point. Can we just focus on  
5 those? I think everyone understands that discovery is  
6 warranted here and as I see it in looking at the responses,  
7 and they're somewhat different -- slightly different --  
8 there's the Raymond Sackler family response which proposes a  
9 mechanism whereby the -- that group would have -- or their  
10 counsel -- would have the opportunity to review the  
11 information in advance and/or it objects to the designation  
12 of professional's eyes only as opposed to outside  
13 professional's eyes only, and the right not only to redact -  
14 - firstly, identifying information but also information  
15 consisting of the names of business -- current business  
16 counterparties and advisors. I think that's what it's  
17 limited to.

18 The Mortimer Sackler group proposes that there be  
19 a somewhat different mechanism, although ultimately not  
20 materially based on considerations other than what the  
21 Raymond Sackler group said, whereby they would provide the  
22 information -- the third-party information -- and then have  
23 a certificate be executed by the third parties.

24 I'm not aware of other differences as between your  
25 request and the two Sackler family groups than those, and I



1 appreciate we have the UCC issues, but that's a separate set  
2 of issues.

3 MR. TROOP: Yes, Your Honor. I think that that  
4 accurately describes the three areas.

5 THE COURT: Okay.

6 MR. TROOP: I think I'll take the first two  
7 together, Your Honor.

8 THE COURT: Well, could I make a suggestion on  
9 that?

10 MR. TROOP: Sure. Yes, sir.

11 THE COURT: And this, I think, would simply leave  
12 the redaction issue but maybe I'm missing something. What  
13 is the harm in designating this material outside  
14 professional's eyes only as opposed to professional eyes  
15 only subject to further ability to come back to the Court?

16 MR. TROOP: So, Your Honor, the nature of the ad  
17 hoc -- of the nonconsenting group's clients are that they  
18 are all attorneys for their own states, and that they, for  
19 the variety of reasons and honestly as I noted in the  
20 pleading, cost, are heavily involved in many aspects of this  
21 case, particularly the review of factual data and the like.  
22 And the -- and they have agreed, Your Honor, to not only  
23 keep this information confidential but to have it be  
24 provided to them through a mechanism whereby their access is  
25 logged. They are unable to copy or download, but they are

1 able to review the documents directly and, in many cases --  
2 and, frankly, save money in the process -- but that's one of  
3 the considerations.

4 The other consideration is, Your Honor, that these  
5 states are going to have to conclude on their own what  
6 they're going to do in this case, and interposing a level of  
7 distance between them and the documents themselves is  
8 unnecessary and burdensome and unhelpful, particularly where  
9 the law in the Second Circuit, Your Honor, and I know this  
10 is in the redaction context, but the law in the Second  
11 Circuit is that you really don't get to keep discovery from  
12 people who are subject to a protective order and have agreed  
13 to be bound by the protective order.

14 There's an irrational concern about allowing the  
15 chief law enforcement agents -- in my case of 24 states and  
16 the District of Columbia and I assume this would extend to  
17 the ad hoc committee -- to the balance of the states save  
18 three, to have access to the crucial information in  
19 connection with decision-making in this case about whether  
20 and under what conditions, if at all, the Sacklers will  
21 retain billions and billions of dollars. And --

22 THE COURT: What about the concern that this  
23 information would be leaked or based on, at least the  
24 allegation in paragraph 12 of the Raymond Sackler's family's  
25 response, under similar confidentiality orders has -- there

1 have been leaks in the past?

2 MR. TROOP: So, Your Honor, there is, in my  
3 opinion, a good faith dispute about whether information was  
4 leaked or not or leaked inappropriately or not, but here,  
5 Your Honor, there's a -- there could be no confusion by any  
6 party that these documents are confidential and cannot be  
7 made public. There's -- there can't even be the basis for a  
8 good faith dispute over that issue given the fact that the  
9 documents are going to be loaded to a PEO view-only, clearly  
10 restricted, signed-up-to-by-everybody platform.

11 THE COURT: So if there were a leak and it could  
12 be identified then clearly it would be a breach. That's  
13 what you're saying, right?

14 MR. TROOP: That's right, Your Honor. And there's  
15 no reason to presume that there will be a leak. These are  
16 attorney generals who have bound themselves to an order of  
17 your court, Your Honor.

18 THE COURT: Okay.

19 MR. TROOP: That's why I say the concern is  
20 irrational.

21 THE COURT: All right. And we might as well  
22 address the next point which is simply -- not raised by the  
23 Raymond Sackler family but by the Mortimer Sackler group --  
24 which is to propose the two-step process as opposed to the  
25 one-step process whereby the group would transmit your

1 client's discovery request as opposed to you doing it  
2 directly to the financial institutions and have it be  
3 provided with a certificate back and then be produced by the  
4 Mortimer Sackler group. It appears to me from that  
5 proposal, at least as laid out in paragraph 8 of the  
6 objection, that -- well, a) the counsel for that group would  
7 review for redaction and confidentiality designations,  
8 although I guess your point is that it would all be covered  
9 by the designation you propose which is attorneys only, and  
10 b), and this is a little less clear, but it suggests that  
11 notwithstanding that earlier I said the ICSPs would transmit  
12 the nonconsenting states discovery requests to the financial  
13 institution, paragraph 8 says, it will enable counsel to the  
14 ICSPs who would be most knowledgeable about the ICSPs  
15 financial arrangements to request records from the financial  
16 institutions in an appropriately targeted manner which  
17 suggests that there would be some limitation imposed by them  
18 on your discovery request.

19 I don't know if I have counsel for -- I think I do  
20 -- for the Mortimer Sackler group. Is that what you have in  
21 mind or will you just pass along under this proposal the ad  
22 hoc committee's requests?

23 MS. MONAGHAN: No, Your Honor, we weren't  
24 proposing to limit their requests in any way. If there was  
25 an additional financial institution that they had missed we

1 would add it.

2 THE COURT: All right. So you wouldn't change  
3 their requests?

4 MS. MONAGHAN: No. It's possible that somebody  
5 would tell us we don't have any accounts at such-and-such a  
6 bank and then we would go back to counsel and say that, but  
7 we would not unilaterally limit their request.

8 THE COURT: Okay. And could you just state your  
9 name for the record?

10 MS. MONAGHAN: Oh, I'm sorry, Your Honor. This is  
11 Maura Monaghan from Debevoise & Plimpton. I represent the  
12 Mortimer Sackler initial covered Sackler parties.

13 THE COURT: Okay. Very well. So Mr. Troop, on  
14 this point, which is separate from the shared point about  
15 confidentiality I think we've already discussed, you propose  
16 simply sending it directly to the financial institutions,  
17 right?

18 MR. TROOP: Yes, Your Honor. We propose and  
19 actually think it's absolutely appropriate that typical  
20 third-party -- a typical third-party record subpoena be  
21 issued.

22 THE COURT: Have you -- are you also subpoenaing  
23 the Mortimer Sackler group for this same information that's  
24 in their possession?

25 MR. TROOP: We haven't done that, Your Honor. We

1 have authority to take discovery from the Mortimer Sackler  
2 group, but this list of people extends to all of the --  
3 potentially all of the Sacklers for whom releases are being  
4 sought, and as will be discussed later in this hearing, I  
5 believe that the Mortimer Sackler side of the family wants  
6 to limit the people with respect to whom discovery is  
7 sought.

8 THE COURT: Well, but that's not in this  
9 objection. I guess we can deal with that when we deal with  
10 the UCC issue if that's -- if they're going to come back on  
11 that point, too. But I'm really just focusing on avoiding  
12 duplicate discovery so how would you avoid doing that?

13 MR. TROOP: Well, I assume that if the financial  
14 institutions produce all of these documents the Sacklers  
15 don't have to produce them a second time.

16 THE COURT: Okay.

17 MR. TROOP: Right? So -- and Your Honor, I think  
18 you need to read paragraphs 8 and 12 of the letter -- of the  
19 pleading -- together with the proposed letter that's been  
20 attached. The letter is conspicuously silent that the  
21 production from the financial institutions is compulsory.

22 THE COURT: Well, I understand that.

23 MR. TROOP: Right? And so --

24 THE COURT: I get that but that's a separate --  
25 I'm just focusing now on the big picture. Normally, I think

1 you would seek this banking or financial information first  
2 from the party which is the Sackler group and then so as not  
3 to burden the third party and not to have undue delay  
4 because there's more delay with third parties including  
5 their argument that we're being unduly burdened because  
6 you've already got nine-tenths of the information already,  
7 that's how you proceed. Why vary it here?

8 MR. TROOP: Well, Your Honor, in part it's because  
9 this case is not -- well, let me answer it in two ways. The  
10 first way, Your Honor, is that to date, we have very few of  
11 these relevant documents and none of these financial records  
12 as far I'm aware from any of the Sackler parties.

13 THE COURT: All right. But you would be compelled  
14 -- but they -- I'm sorry. Let me interrupt. They would be  
15 compelled to produce them now under a Rule 2004 order and  
16 then as it's I think normally done, then you would, if  
17 you're not satisfied with that production -- you think  
18 there's more or even if you just want to confirm there's not  
19 more -- you'd get a 2004 order from me to get the documents  
20 from the third parties, the financial institutions, and in -  
21 - then serving that subpoena, you'd work out with them a  
22 mechanism whereby they wouldn't have to do -- they would  
23 search their files but they'd know what to search for. And  
24 they wouldn't have to produce more than what is not -- they  
25 don't have to produce what has not been produced by the

1 Sacklers and that would be under penalty of perjury. They'd  
2 be compelled to do it but, you know, that way the burden is  
3 less on the financial institutions.

4 MR. TROOP: Although, Your Honor, I'm not sure  
5 that's the case, right? That presumes that the Sacklers had  
6 in their possession all -- substantially all -- of these  
7 banking records and are not themselves required to go to the  
8 financial institutions and request them from the financial  
9 institutions in order to produce them, one. Two --

10 THE COURT: Well, that usually happens. I mean,  
11 that is often the case, that people go and request their  
12 banking records to the extent they don't have them from the  
13 financial institutions. There are times when the financial  
14 institutions balk at that at which point there's a subpoena  
15 on the financial institution.

16 MR. TROOP: So, Your Honor, then the second point  
17 is, is that given the pace at which parties are trying to  
18 push this case forward, it will delay process to do this in  
19 a series. It will --

20 THE COURT: Well, the financial institutions  
21 aren't here. They haven't gotten this 2004 request yet.  
22 Let me ask Ms. Monaghan. How quickly do you believe that  
23 the Mortimer Sackler parties could respond to this request  
24 with regard to the information that is also being sought of  
25 the financial institutions?



1 MS. MONAGHAN: So, Your Honor, I think we could  
2 respond very quickly with the information that's in our  
3 possession and that we would promptly ask the financial  
4 institutions for anything that we think we don't have. You  
5 know, these various family members have family offices that  
6 keep these types of records so I would think that we could  
7 do it in -- I don't want my colleagues to crucify me because  
8 I'm always underestimating the amount of time discovery  
9 takes, but I would think we could put it in 30 days.

10 THE COURT: Okay.

11 MS. MONAGHAN: There may be periods longer ago  
12 that would take longer so we might start with the more  
13 recent periods, but --

14 THE COURT: Well, it would seem to me that if you  
15 get top cooperation from the financial institutions that  
16 process makes sense. If you don't, then I think a subpoena  
17 should go out to the financial institutions.

18 MS. MONAGHAN: Yes, Your Honor. And we could  
19 commit to keeping Mr. Troop and if necessary, the Court  
20 updated on that.

21 THE COURT: Okay.

22 MR. TROOP: Your Honor, for what it's worth, my  
23 experience has not been the same as yours. My experience is  
24 that when serving discovery on banks, particularly discovery  
25 limited to non-ESI discovery like this is, they are

1 extremely efficient at gathering the documents and producing  
2 them, that they are -- and there's no question about the  
3 completeness. So reversing this process adds at least one  
4 and maybe more potential for, a) incomplete documents and  
5 delay because --

6 THE COURT: Well, you don't have --

7 MR. TROOP: -- because it will --

8 THE COURT: Mr. Troop, can I interrupt you? At  
9 this point -- I appreciate maybe some of these people are in  
10 their offices -- but I think your normal experience isn't  
11 the case now. I don't think this is particularly high on  
12 their list. It should be high on the Sackler's list to get  
13 done. I think you may well get a response from any one of  
14 these that, our resources are stretched. We're trying to  
15 figure out how to manage a multi-trillion dollar loan  
16 program and our legal staff will get to this when we get to  
17 it.

18 MR. TROOP: And, Your Honor, if that's --

19 THE COURT: And again, if they don't promptly  
20 respond to the Sackler's counsel, then you would issue the  
21 subpoena immediately and the order would provide for that.  
22 So I think that's how it should go and if -- the Raymond  
23 Sacklers haven't proposed that then I guess they're more  
24 comfortable just with having it go out to the banks, but I  
25 don't see -- to me, it seems more efficient to do it that

1 way.

2 I agree with you that the certificate notion  
3 doesn't work. You should be entitled to subpoena the banks  
4 after you get the production from the Sacklers or if the  
5 banks are not being cooperative with the Sacklers. And if  
6 it -- 30 days is sufficient. So part of that would be that  
7 the Sacklers would have to make the request of the banks  
8 right away, like within seven days.

9 MR. TROOP: And, Your Honor, in connection with  
10 the request, is the request as set forth in their exhibit or  
11 the request -- does the request have to say --

12 THE COURT: It has to follow your discovery  
13 request. It has to be your discovery request.

14 MR. TROOP: But doesn't it also have to tell the  
15 financial institutions that this is -- the process is being  
16 undertaken pursuant --

17 THE COURT: Just tell them --

18 MR. TROOP: -- to a court order.

19 THE COURT: -- it should tell -- I'm sorry. I'm  
20 talking over you. I apologize with the problem of being on  
21 the phone. It should say that if you do not promptly  
22 respond, you'll get your own subpoena.

23 MR. TROOP: Your --

24 THE COURT: No, I agree with that part of your  
25 response on this. This is just to avoid undue burden on the

1 banks, and to have the Sacklers, you know, show that they're  
2 on top of this by replying promptly and getting the  
3 information from the banks. If it doesn't come, then they  
4 need to tell you right away. They need to tell the banks  
5 right away that if, you know, like at the very beginning  
6 that they should -- they need to produce it to the Sacklers.  
7 And if it's not produced, then there will be -- they're  
8 under an obligation and a court order to inform you, and you  
9 are authorized by court order to issue the subpoena  
10 immediately to the bank for it.

11 And you're also authorized to issue a subpoena to  
12 the bank after the production just to -- you know, so that  
13 they can respond by seeing -- by then going through with you  
14 what has been produced. They can limit their search, and  
15 then they can tell you what else, if anything, they have or  
16 certify, as you need to when you get a subpoena, I don't  
17 have any other responsive documents.

18 MR. TROOP: Your Honor, the process that you laid  
19 out strikes me that it has at least three places where it  
20 could hiccup that are all avoided through the issuance of  
21 the subpoena. And it is in the initial request, it's when  
22 the documents are received and whether they're completed,  
23 and then having to go back to the banks a third time.

24 THE COURT: Well, you would be going to the banks  
25 --

1 MR. TROOP: And --

2 THE COURT: But, I'm sorry, you'd be going to the  
3 Sacklers too. You have the same steps with going to them  
4 after the banks' production.

5 MR. TROOP: But -- well, Your Honor, this -- I  
6 don't think that there can really be a dispute that getting  
7 the documents directly from the banks is the cleanest way to  
8 assure that fully responsive documents are received based on  
9 what the banks have in their possession. And whatever  
10 delays may be occasioned because of the -- if banks are  
11 going to take the position that they can't respond because  
12 of the other pressures that are on them right now, those  
13 same responses are going to go to the Sacklers.

14 THE COURT: Did you serve your 2004 request on the  
15 banks?

16 MR. TROOP: (indiscernible), Your Honor, we did  
17 serve them with that.

18 THE COURT: So, they have not yet responded to it.

19 MR. TROOP: As they generally would not, right,  
20 Your Honor?

21 THE COURT: Right. But isn't your experience that  
22 when they get these, they do respond eventually?

23 MR. TROOP: I can only tell you that when -- and I  
24 don't really want to get on a tangent from the New York  
25 subpoenas. But as a factual matter, when the New York

1 subpoenas were served, banks started producing documents  
2 within days. And here, Your Honor, unless, which I don't  
3 think (indiscernible) --

4 THE COURT: Had the Sacklers already been  
5 subpoenaed at that point?

6 MR. TROOP: I do know that discovery was out to  
7 the Sacklers. I didn't -- I don't represent New York in  
8 that litigation. New York is on a listen-only line today.  
9 I will look for an email response.

10 THE COURT: And you say this does not seek ESL  
11 searches. It wasn't clear to me that that was the case.

12 MR. TROOP: It looks for account information,  
13 transfers in and out. It is focused. We changed language  
14 at the request of, I forget which side of the family. We  
15 changed -- I think we took out pertaining to because of a  
16 concern that that would invite ESI discovery. And we asked  
17 for -- and, Your Honor, there's one interrogatory that says  
18 where else might you have documents. We don't say produce  
19 those documents, but where else you might have documents so  
20 that if we have to go back, we have a roadmap there.

21 But it's -- but we listened very hard during the  
22 April 9th chambers conference, Your Honor. We focused very  
23 carefully. We thought very hard about the propriety of  
24 proceeding now, both in the context of where the case is,  
25 the decisions that parties are going to be asked to make or

1 not during the course of this mediation.

2 And the reality that to date -- and the committee  
3 will talk about this more, that one would expect where  
4 someone wants a release of such significant potential  
5 liability is the inundation of information and data and  
6 underlying documents, particularly when they're on notice  
7 that it is the underlying documents people want to see,  
8 they're not getting turned over.

9 THE COURT: So let me just make sure I understand  
10 then. The subpoena you would be authorized to issue if I  
11 granted your order would be limited to account records; not  
12 like general description of banking relationships or, you  
13 know, correspondence, but account records, transfer records,  
14 things like that.

15 MR. TROOP: Yeah. I mean, I'll look again, Your  
16 Honor, but that's really what we -- we're focused on. You  
17 know, this --

18 THE COURT: All right. Well, that does change my  
19 analysis because that -- if I were an in-house lawyer at one  
20 of these banks, if it's limited to that, I would understand  
21 it's relatively easy and it's probably information I should  
22 be given and the fact there's any way they would ask me for  
23 it.

24 If it was more than that, I'd say in response to  
25 you when I called you up after I got the order, why aren't

1 you asking the Sacklers for this stuff first. But if it's  
2 the account records, that should be relatively easy, you  
3 know, that sort of stuff. So I understand your point on  
4 that, Mr. Troop.

5 MR. TROOP: Look, since the only one honestly,  
6 Your Honor, that might go farther than that is a request for  
7 loan correspondence files, right, letters to the bank,  
8 letters from the bank, notes, memoranda, et cetera to the  
9 file. And if we need to cut that one back, we'll cut it  
10 back, but otherwise --

11 THE COURT: I think you should. Get that first  
12 from the Sacklers. And if there's some reason that you  
13 think you still need that, you know, you can come back to  
14 me.

15 MR. TROOP: Okay. But, otherwise, Your Honor, so  
16 you know, it's -- just so that you can hear it, it's  
17 signature cards, board authorizations, account statements,  
18 canceled checks, deposit tickets, items deposited, credit  
19 and debit memos, certain tax forms, applications, ledger  
20 sheets, documents that show how loan repayments were made,  
21 documents reflecting disbursement of loan payments, bank  
22 checks, credit memos, cash auth tickets, wires out, right,  
23 collateral agreements.

24 THE COURT: Well, let me ask you -- let me ask the  
25 Sacklers' counsel. Is that the type of information that you



1 don't have to formulate search terms for, but you can simply  
2 search with those names to come up with?

3 MS. MONAGHAN: Your Honor, I think some of it is  
4 information that wouldn't require a search term. I'm not  
5 sure that all of it is.

6 THE COURT: Well, wouldn't be? I mean, when I say  
7 -- I mean, actually, you've got one search term. I'm just,  
8 you know, I don't want to impose upon a bank unnecessarily  
9 the need to come up with, to think through and to debate  
10 with Mr. Troop's litigators what are the appropriate search  
11 terms. I want it to be self-evident. What isn't self-  
12 evident in that list?

13 MS. MONAGHAN: I think the loan documents that Mr.  
14 Troop referenced are not self-evident. To the extent he's  
15 just looking for account activity, that wouldn't require  
16 search terms as I understand it, but that also would be  
17 something that the family would be able to obtain quickly as  
18 well.

19 THE COURT: Well, so with the caveat that the, you  
20 know, the loan file. And if you can identify anything  
21 reasonable that would require more than one or two search  
22 terms, you can come back to me on that, but I don't think we  
23 need to go through the two-step process that you've  
24 outlined.

25 Let's go back then to the professional eyes

1 only/confidential -- slash confidential versus outside  
2 professionals' issue. I've not heard from counsel for the  
3 Raymond Sackler group that I think has taken the lead on  
4 this point for both groups. Mr. Uzzi or Mr. Joseph, do you  
5 want to address it and why relying only on professional eyes  
6 only/confidential as opposed to outside professional eyes  
7 only/confidential is necessary here?

8 MR. JOSEPH: Your Honor, thank you. This is  
9 Gregory Joseph for the Raymond Sackler side. If there's  
10 going to be a designation that is produced for the documents  
11 that we're concerned about, we'd want outside professionals'  
12 eyes only/highly confidential. The professional eyes  
13 only/confidential information is a large, large number of  
14 people. It is every member of every committee, outside of  
15 market participants, so that's private parties, states,  
16 municipalities, and unspecified number of designees,  
17 attorneys, but not just attorneys.

18 It's also staff, so we multiply it by more than 50  
19 because we have all the states, plus we have municipalities  
20 and private parties. There's going to be no tracing any  
21 leak, and there is just too much media attention on this.  
22 As the New York experience shows, there's just too much  
23 media attention and too great a risk for a leak.

24 And that's why, Your Honor, I'm not going to speak  
25 on anything you don't want me to speak on, but I would like

1 to address those two categories of redaction that we've  
2 requested the ability to make. The first is personally  
3 identifying information; that's email addresses, physical  
4 addresses, home phone numbers, social security numbers for  
5 family members that had no role in any of the challenged  
6 actions. There are a lot of threats against family members  
7 on the Internet. These people had nothing to do with  
8 anything. There's no reason not to permit the redaction of  
9 their email addresses, their home address and phone number,  
10 and their social security number.

11 And on the business and investment counterparties,  
12 all we're talking about, as Your Honor said, current  
13 counterparties, and we don't -- we're not going to redact  
14 anything relating to former ones. But the history of the  
15 last two years shows that counterparties pull away if their  
16 names are publicly associated with the family. That's not  
17 going to serve anybody's interests. It's going to be  
18 counterproductive to the success of the cases if the  
19 family's wealth is harmed by disclosing counterparty names  
20 because relationships are terminated, or redemptions are  
21 forced.

22 And they can't show good cause for this  
23 information. You know, they have not even attempted in  
24 their reply brief to state good cause for personally  
25 identifying information of uninvolved individuals that are

1 family members. And the only thing they say in attempting  
2 to show good cause is the counterparty information is this  
3 sentence on Page 10, Item D of their reply brief.

4           Knowing with whom and how much the Sacklers'  
5 wealth is integral to answer questions about that wealth and  
6 evaluate the releases the Sacklers demand. That's a  
7 conclusion; it's not an explanation. They know how much  
8 wealth the family has, and when we get to the UCC motion,  
9 I'll go through all of the information they already have.  
10 But knowing that money is invested today with hedge fund A  
11 as opposed to hedge fund B does not help them evaluate  
12 releases. They're not auditing the quality of our  
13 investments.

14           You know, they can't make a showing that there's  
15 any undue hardship or injustice if they don't get that  
16 information. And they can't show, you know, the SunEdison  
17 quotes the 26(b)(1) standard to have to show the importance  
18 of the discovery in resolving the issues. They can't make  
19 that showing for either of these categories.

20           So we have no problem with the subpoena being  
21 issued to the banks. We don't have a problem with subpoenas  
22 being issued to additional financial institutions. We've  
23 had very productive meet and confers with Mr. Troop and his  
24 firm. The only issue we've got are the redactions. We just  
25 want 14 days to be able to redact those two limited pieces

1 of information.

2 THE COURT: So mechanically how it would work is  
3 the information would be still provided directly to the  
4 subpoenaing party, but it would be only to outside counsel.  
5 You would have 14 -- and to you, of course, and you would  
6 have 14 days to designate it -- put in the redactions,  
7 correct?

8 MR. JOSEPH: That's fine, Your Honor. We had  
9 suggested that the information come to us because we didn't  
10 want the information to get out altogether. But outside  
11 counsel is acceptable; that's perfectly fine. We have  
12 complete confidence in Mr. Troop and the outside counsel for  
13 the other committees.

14 THE COURT: Okay. So, Mr. Troop, what is the --  
15 let's go to the identification point. What does it matter  
16 if today, as opposed to, you know, a year ago, the current  
17 financial institution or investment advisor; why is that  
18 identity important for your client or individual attorneys'  
19 general.

20 MR. TROOP: Your Honor, as you may recall, the  
21 proposal from the Sacklers is that their contribution will  
22 be in the form of a guaranteed payment at the end of a  
23 particular period in time. Therefore, the fact that a fund  
24 might have a value of X today is only part of the analysis  
25 that parties in this case are going to have to undertake in

1 determining whether that kind of structure and whatever that  
2 amount is is a worthwhile risk taking.

3 Because if X today is in a series -- is, by way of  
4 example, Your Honor, because I have no idea, right. But if  
5 X is -- if X was valued in a presentation in October of last  
6 year and X was a series of bonds held in exploration and  
7 production oil and gas companies through a fund, then that  
8 information is critically important to being able to assess  
9 the proposal by any party in this case.

10 THE COURT: But --

11 MR. TROOP: And so, Your Honor, I --

12 THE COURT: Can I interrupt you? Unless the fund  
13 itself is the credit entity, you -- I guess I don't  
14 understand why that can't be done generically, unless you're  
15 telling me that the attorney general of the State of New  
16 York wants to evaluate funds by who their managers are. I  
17 don't -- I don't get it.

18 MR. TROOP: Your Honor, I actually -- I'm trying  
19 to think about how to explain the issue clearer or  
20 differently. The information that's provided and has been  
21 provided without the name of the counterparties gives no  
22 clue as to how the money is invested or through whom. And  
23 if the money -- and so I use by way of example, if it's  
24 invested in a fund which is an oil and gas fund, that is an  
25 important piece of information for people to know.

1 THE COURT: Well, Mr. Joseph --

2 MR. TROOP: And, frankly, knowing who it is is  
3 important as well because some are doing well and some  
4 aren't, right? So the information that was received was  
5 static and static before a period where oil prices arguably  
6 have gone negative, okay, so if there's no basis upon which  
7 to make that analysis or do that evaluation, and having the  
8 information provides the basis to determine whether further  
9 inquiry is required.

10 THE COURT: Well, that's what you have financial  
11 advisors for, right?

12 MR. TROOP: But I don't have a financial advisor,  
13 Your Honor, and I'm sharing with the AHC.

14 THE COURT: Well, they have one.

15 MR. TROOP: We're the ones who aren't getting paid  
16 by the estate.

17 THE COURT: They have the same interests. They  
18 have the same interests and they're well paid. I just don't  
19 understand -- I mean, to me, before you run the risk of the  
20 leaks, it would seem to me that you would have to have a  
21 good reason to get it. If your financial advisor has it,  
22 what's the point of having them or using them if you can't  
23 rely on them and instead you need to rely on a lawyer in  
24 house.

25 I mean, I had thought maybe I could go with your

1 way and just say that if there's any leak, the claim of the  
2 state that leaked it would be equitably subordinated. But I  
3 tend to agree, if the numbers are so great here and, of  
4 course, the press would not leak it. I mean, a leak in a  
5 pleading obviously is easy. But if it's a leak to the  
6 press, it'll be impossible to trace, so I'm not sure that  
7 5(10)(c) determination in advance is enough of a threat,  
8 particularly in today's world where shaming has become a  
9 litigation tool. And, to me, it's even worse with the PII,  
10 right? Why would that need to be disclosed, beyond someone  
11 who could just do the diligence and say, oh yeah, that is  
12 the person who, you know. I don't understand why the PII  
13 would even be an issue here.

14 MR. TROOP: Your Honor, I'll share briefly my  
15 thinking, but I don't think it's going to persuade you.  
16 Okay? You know, part of the information that we've been  
17 given is that -- and, look, Your Honor, we're trying to  
18 figure out how to prove something that hasn't been  
19 disclosed, right; that it's part of the exercise.

20 So if grandchild X is getting account statements  
21 at an address in -- pick your state -- Ohio, but the  
22 information that we've been provided shows an address of  
23 Florida, that provides a piece of information that would be  
24 appropriate for us to follow up on and that we won't --  
25 well, I guess, I'll know about it.



1 THE COURT: Well, again, I think people at some  
2 point have to rely on their outside counsel to do that basic  
3 due diligence.

4 MR. TROOP: As I said, Your Honor, I didn't think  
5 I was going to persuade you.

6 THE COURT: Well, okay.

7 MR. TROOP: But you took a deep breath, so I  
8 thought I had to take a shot.

9 THE COURT: Well, that's all right. That's fine.  
10 If this weren't such a large group, but at this point, it's  
11 an unmanageable group for tracing purposes unless the  
12 agreement would be violated in a pleading, which would be  
13 easy. But to me, the purpose for this less than highest  
14 level of protection on disclosure isn't really served by  
15 these two categories of information and for two different  
16 reasons.

17 On the PII, it's easy for one person to do the  
18 matching exercise and that person will be free to do that,  
19 whoever that person is designated to be in the outside  
20 counsel realm of getting this information. So that's easy  
21 to do, and there's no reason to have, you know, 5 to 10  
22 people in 50 different states plus municipalities and other  
23 governmental entities doing the same thing. Again, that's  
24 why they hire counsel, one of the reasons.

25 The other piece of information. The analysis is

1 sophisticated. The name doesn't necessarily help that much.  
2 It's the nature of the investment that's the key, and I  
3 gather the nature of the investment would be disclosed; it's  
4 just where it's held that's the sticking point. And at that  
5 point, you're looking at evaluating fund X from fund Y based  
6 on who runs it and their track record. And to me, that's  
7 something that, if you're going to rely on it at all, why  
8 you have an investment banker. And you're sharing one and  
9 I'm grateful that you're sharing the cost on that, but  
10 they're quite capable and they should be able to do that  
11 exercise.

12 So I think those two pieces of information should  
13 be designated outside professionals only/confidential. And,  
14 again, that's not limited to lawyers, right? Your financial  
15 advisor can look at that?

16 MR. TROOP: My understanding, Your Honor.

17 THE COURT: Okay, all right. Well, if for some  
18 reason when people go back and look at the designation, it's  
19 limited to lawyers, it shouldn't be. It should cover the  
20 outside financial advisor too.

21 MR. JOSEPH: It does. Your Honor, Gregory Joseph.  
22 It does include outside professionals --

23 THE COURT: Okay.

24 MR. JOSEPH: -- hired by outside counsel.

25 THE COURT: All right, so I think that covers the

1 narrow issues raised by the motion. Although when we turn  
2 to the UCC letter, I think probably with good reason, Mr.  
3 Troop expects that there would be the same types of disputes  
4 -- but maybe I'm wrong -- with regard to the production he's  
5 seeking, or now we've resolved he's entitled to, as is the  
6 case with the 2004 order that the UCC has that other parties  
7 are also enabled to participate in. So why don't we turn to  
8 that and, unless I'm wrong, the rulings I'll make in  
9 connection with this will go to the other similar types of  
10 discovery.

11 MR. TROOP: And, Your Honor, just so we're all  
12 clear. Can I summar- -- and assuming that you're going to  
13 want us to draft the order and circulate it.

14 THE COURT: Yes.

15 MR. TROOP: Can I summarize my understanding of  
16 the executable parts of your order?

17 THE COURT: Yes, that's a good idea.

18 MR. TROOP: So, Your Honor, I understand that the  
19 order -- that the motion will be granted with the following  
20 limitations: that the productions from the financial  
21 institutions will come out on an outside professional eyes  
22 only basis; they will then be provided to the Sackler  
23 counsel, who will have 14 days to redact --

24 THE COURT: Well, can I interrupt you there?

25 MR. TROOP: Yeah.

1 THE COURT: I was okay with -- and I think Mr.  
2 Joseph confirmed this, that they could be provided to you  
3 and the Sacklers will have 14 days to redact.

4 MR. TROOP: I'm sorry, that --

5 THE COURT: And if you have a disagreement about  
6 their redaction, then you can raise it with me.

7 MR. TROOP: But, I'm sorry, I didn't mean to  
8 misspeak. I meant to say that the production will be made  
9 to us because we'll get it --

10 THE COURT: Right.

11 MR. TROOP: -- on an unredacted basis, right?

12 THE COURT: Correct, the outside professionals.

13 MR. TROOP: Outside professionals.

14 THE COURT: Yes.

15 MR. TROOP: Then the unredacted production will  
16 either simultaneously or through us, depending upon how the  
17 production is made, be delivered to the Sackler counsel,  
18 Sackler lawyers. The Sackler lawyers will then have 14 days  
19 to redact personally identifiable information and current  
20 counterparties and financial advisors; and that once that is  
21 done, the documents will then be available on a confidential  
22 basis to parties subject to the protective order.

23 THE COURT: Yes.

24 MR. JOSEPH: Your Honor, it's still professional  
25 eyes only. Excuse me, I'm sorry. Gregory Joseph.

1 THE COURT: Yes, professional/confidential.

2 MR. TROOP: That's --

3 THE COURT: Although, again, the unredacted  
4 information, notwithstanding the redactions by the Sacklers,  
5 is still available to the outside professionals.

6 MR. TROOP: Understood, Your Honor. It was really  
7 that last point, and I think Mr. Joseph for jumping in. It  
8 was unclear to me what was supposed to happen after the  
9 redactions.

10 THE COURT: Well, that's a good point. What did  
11 you -- I don't know; that hadn't really been discussed.  
12 What does the case order say?

13 MR. TROOP: I mean, it actually doesn't say, Your  
14 Honor. They can still designate the documents and, in  
15 certain cases, be PEO, right, professional eyes only --

16 THE COURT: right.

17 MR. TROOP: -- which would include attorney  
18 general lawyers or not. And then --

19 THE COURT: Well, I mean, look, if it's redacted,  
20 I'm not sure -- I think that you should go down to the  
21 lowest common denominator for the rest of the information,  
22 whatever that is.

23 MR. JOSEPH: Your Honor, Gregory Joseph. The  
24 request that they had was for a subpoena that was  
25 professional eyes only/confidential information. It was

1 never a request that the information would go out to the  
2 public at large, all these financial records.

3 THE COURT: Okay. Well then whatever the subpoena  
4 would provide, then that's how it should be.

5 MR. JOSEPH: Okay.

6 MR. TROOP: And, Your Honor, and I guess I'm sorry  
7 to beat this, but there are designations lower than, so to  
8 speak, professional eyes only in the protective order that  
9 still require parties to keep it confidential. And it seems  
10 to me that --

11 THE COURT: Right. All I'm saying is I think you  
12 guys agreed on the rest of the order covering this. So what  
13 that agreement provides should be how it is and, you know, I  
14 don't think we need to go beyond that.

15 MR. TROOP: So then the last part of the  
16 executable part of the order will be that once redacted, the  
17 documents will be made available on the view only,  
18 professional eyes only -- view only, professional eyes only  
19 database.

20 THE COURT: Correct.

21 MR. TROOP: Okay.

22 THE COURT: And, you know, again, I think that the  
23 next topic may -- you may want to take in because the  
24 resolution of the discussions are all going to be enough  
25 just so that we don't have to do this twice, but let's turn

1 to that then, the committee letter.

2 MR. TROOP: Thank you, Your Honor.

3 MR. HURLEY: Your Honor, it's Mitch Hurley with  
4 Akin Gump on behalf of the Official Committee of Unsecured  
5 Creditors.

6 THE COURT: Yes.

7 MR. HURLEY: Before we move on, Your Honor, could  
8 I just confirm that copies of those documents that are going  
9 to go to Mr. Sackler's firm in the first instance will also  
10 go to Akin Gump, consistent with the process that's been  
11 described.

12 THE COURT: Well, I thought the way we're doing  
13 this discovery is that you and the Debtors and the non-  
14 consenting states and the consenting states all get it,  
15 right? I thought that's how it works.

16 MR. HURLEY: That's fine. That's fine, as long as  
17 it's clear that we also have access, whether we get it from  
18 Mr. Troop or directly.

19 THE COURT: Everyone gets it simultaneously; let's  
20 put it that way.

21 MR. HURLEY: Got you, okay. Thank you, Your  
22 Honor.

23 THE COURT: And I want the provision that's in the  
24 existing order in all of these orders, which is the weekly  
25 conferring about keeping the costs down.

1 MR. HUEBNER: Your Honor, one clarification on  
2 that provision. It's Marshall Huebner with David Polk.  
3 When you say that provision, that paragraph has two  
4 components to it, just so that we all have clarity. One is  
5 the conferring to keep costs down; the other is reporting  
6 the costs actually spent. Do you mean both of those or only  
7 the first of those in orders?

8 THE COURT: Well, I don't know -- I mean, I'm very  
9 concerned that this is going to be a -- has been and will  
10 continue to be, particularly with the number of firms  
11 involved, a very expensive exercise. I need some teeth in  
12 it.

13 MR. HUEBNER: Your Honor, we --

14 THE COURT: Not necessarily reported to me, but it  
15 needs to be reported to somebody so that someone can say,  
16 you know, this is -- when you measure the cost versus the  
17 benefit, it's getting ridiculous. I'm not saying that we're  
18 at that point, but I'm worried that at some point, we will  
19 get there.

20 MR. HUEBNER: Okay, Your Honor. I was not pushing  
21 back on the inclusion. It's just when you referenced that  
22 paragraph, and some of will need to draft these things, I  
23 assumed that you probably did mean both pieces.

24 THE COURT: I did.

25 MR. HUEBNER: I just wanted to confirm.



1 THE COURT: Yeah, no, I meant the whole thing.

2 MR. HUEBNER: Okay, thank you.

3 THE COURT: Okay. Look, litigators -- this is no  
4 knock on litigators, right, litigators are wonderful people  
5 and they do a great job, certainly this group collectively.  
6 But they have one task, which is to get ready for trial and  
7 get as much information as they can to do that, particularly  
8 when the bankruptcy lawyers are in charge of, you know, the  
9 bankruptcy case and settlements. But that's not ultimately  
10 how bankruptcy needs to work. The bankruptcy lawyers need  
11 to stay on top of this so that the money that's going to go  
12 to creditors doesn't get eaten up in preparing for a perfect  
13 litigation.

14 MR. HUEBNER: We understand, Your Honor.

15 THE COURT: Okay, and that's not a knock on  
16 anyone. I just -- the bankruptcy lawyers are stretched  
17 thin, been working on a lot of things in this case -- in  
18 these cases. And I know it's going to be hard for them to  
19 monitor what their litigators are doing, but there needs to  
20 be some process to do that, and it's more than just, you  
21 know, telling them to turn the lights off when they leave  
22 the office. I don't want to see at the end of this case fee  
23 applications for four or five different sets of lawyers all  
24 doing the same thing in these discovery matters.

25 MR. LEES: Your Honor, this is Alex Lees at

1 Milbank. I had one further question on the provision that  
2 has been referenced, particularly in light of Your Honor's  
3 reference just now to fee applications. We just wanted to  
4 obtain clarity as to whether the keeping track of and  
5 sharing of information about discovery costs was intended to  
6 apply also to the families --

7 THE COURT: No.

8 MR. LEES: -- or whether the intention was to  
9 limit to --

10 THE COURT: No.

11 MR. LEES: -- the state action.

12 THE COURT: No, it wasn't. No, it wasn't, just to  
13 the people who are likely to -- well, who will or are likely  
14 to as part of a consensual plan be submitting their bills to  
15 the estate.

16 MR. LEES: Thank you, Your Honor.

17 MR. HUEBNER: Your Honor, to be fair, we will do -  
18 - I assume that we will simply do and revised the provision  
19 that you personally drafted and insert it in the order,  
20 transpose it into this new order and we know who it covers.

21 THE COURT: Okay. Thank you, Mr. Huebner. Okay.  
22 All right, so Mr. Hurley, you were about to jump into your  
23 letter from April 26th.

24 MR. HURLEY: I was, Your Honor, thank you. So,  
25 Your Honor, I have four argument points. I think I'll

1 actually take them out of order because of the discussion  
2 that we just finished having about redactions; that was my  
3 last point. But I want to address it first because it may  
4 be that based on what -- where Your Honor's coming out that  
5 we don't have a serious problem with that issue.

6 So first of all, you'd asked Mr. Troop what his  
7 position was with respect to the designation of information  
8 as outside professional eyes only in connection with the  
9 bank's subpoena. And from the committee's perspective, we  
10 don't have an issue with outside professional eyes only  
11 designations generally to the extent that the designation  
12 can be justified -- obviously, all of this is subject to the  
13 parties' challenge rights -- but that's not a serious  
14 concern for the committee.

15 What is a serious a serious concern for the  
16 committee is the idea that there will be selective  
17 redactions of any documents, whether in response to the  
18 bank's subpoenas or otherwise.

19 Now, if the way we're coming out here is just that  
20 there will be some versions of documents that have selected  
21 redactions and those versions will be supplied, you know, to  
22 people under professional eyes only basis. But there still  
23 will be a completely unredacted version available to outside  
24 professionals that I don't think there's any issue, at least  
25 from the committee's perspective.

1 The concern that we would have is if no one,  
2 including outside counsel and outside advisors, that are  
3 going to have access to particular words or lines included  
4 in a document that is otherwise been deemed responsive.

5 THE COURT: So this is not a privilege redaction;  
6 this is just based on relevance or confidentiality you're  
7 focusing on?

8 MR. HURLEY: Exactly, Your Honor, correct.

9 THE COURT: Right.

10 MR. HURLEY: Exactly, Your Honor.

11 THE COURT: I tend to -- I mean, that sounds  
12 reasonable to me. You should be able, as the outside  
13 professional, to say, well, wait a minute, I think this is  
14 relevant or, you know, explain to me why this is  
15 confidential.

16 MR. HURLEY: Yeah. The committee believes that's  
17 exactly right, and we'll just add -- I won't belabor the  
18 issue because I think you hit the nail on the head. It also  
19 creates, like, a pretty substantial additional burden when  
20 you have individual words and lines from documents being  
21 excised.

22 THE COURT: Right.

23 MR. HURLEY: Because, you know, receiving party  
24 really can't just take the other side's word for it.

25 THE COURT: No, I understand.

1 MR. HURLEY: Yeah.

2 THE COURT: I think -- I mean, unless I'm missing  
3 something, this level of response doesn't let the cat out of  
4 the bag like a privilege or work product would, so I think  
5 what you're saying is fine.

6 MR. HURLEY: Excellent. Then I will move on to  
7 the other aspects of my presentation. So by its motion, the  
8 official committee is asking the Court to first set an  
9 initial disclosure schedule, meaning to order members of the  
10 Sackler family and their affiliates to begin and complete  
11 their initial ESI productions by May 15th and July 1,  
12 respectively.

13 And number two, we ask the Court to hold that the  
14 initial covered Sackler persons have possession, custody or  
15 control over documents in the possession of the IACs for  
16 purposes of responding to the subpoenas. And three, enter  
17 relief so that documents that are possessed by other covered  
18 Sackler parties can also be made available for discovery in  
19 these cases. My fourth point was with respect to  
20 redactions, but I think that may have been resolved.

21 So in their opposition papers, the Sacklers have  
22 pointed out that the official committee already has access  
23 to a large volume of prepetition discovery material and, of  
24 course, that's true. As we explained in our 2004 motion,  
25 millions of documents were produced mostly by Purdue in the

1 MDL and those have been made available to us, but that  
2 discovery wasn't aimed at claims that are critical in these  
3 cases.

4 For instance, I think as everyone by now is aware,  
5 between approximately 2008 and 2016, a very substantial  
6 amount was transferred out of Purdue, and I won't say more  
7 than that because this is a public line. The estates are  
8 pursuing intentional and constructive fraudulent conveyance  
9 claims against the Sacklers and their trusts with respect to  
10 those transfers. And while in the MDL, there were a few  
11 late filed complaints that raised fraudulent conveyance  
12 claims, those claims just were not the focus of prepetition  
13 discovery. And of course, there are other estate claims  
14 like breach of fiduciary duty and illegal dividends and  
15 aiding and abetting that were not a part of those cases at  
16 all.

17 And in addition to those admitted concepts, there  
18 were key custodians who weren't searched at all; that  
19 includes nearly all of the members of the Sackler family.  
20 There was just one Sackler, whoever conducted searches of  
21 personal non-Purdue-hosted ESI for any purpose, and only a  
22 handful who even had their Purdue ESI searched and  
23 (indiscernible).

24 THE COURT: Can I interrupt you on this?

25 MR. HURLEY: Of course.

1 THE COURT: When you say key custodians, key  
2 custodians of what do you mean by that, of what information?

3 MR. HURLEY: Well, the type of information, I  
4 would say, largely but not exclusively are emails, text  
5 messages and other electronically stored information.

6 THE COURT: From Purdue or among -- could you just  
7 elaborate some more on that?

8 MR. HURLEY: This motion is directed at the  
9 Sacklers and at -- and not with respect to Purdue-hosted  
10 Sackler emails, for instance, but with respect to ESI; that  
11 is, like, personal emails for the Sacklers, for instance, or  
12 emails that are hosted by Sackler affiliates, other than  
13 Purdue, that are in the Sacklers possession, custody or  
14 control, as opposed to in Purdue's possession, custody or  
15 control.

16 So that's the focus of the current motion is what  
17 the Sacklers documents. And like I said, there's only been  
18 one Sackler who's ever had to do any searching of documents  
19 in that category. There had been a handful that have had  
20 their Purdue documents searched, but we believe  
21 substantially more searching and disclosure has to be done  
22 with respect to those Purdue accounts as well. But that's  
23 not what this motion is about; it's directed to the Sacklers  
24 and their hosted information. Does that answer your  
25 question, Your Honor?

1 THE COURT: Yes, thanks.

2 MR. HURLEY: Okay. Other folks that escaped  
3 disclosure entirely, including -- include the Sacklers  
4 longtime accounting and legal advisors, handpicked board  
5 members. Some of that material may be in the possession,  
6 custody or control of Purdue; some of it may not. None of  
7 this is to cast blame on the prepetition process; they were  
8 focused on different things. But the fact is that discovery  
9 that's critical to these cases has not yet been taken,  
10 especially with respect to the Sacklers, and we submit it  
11 absolutely is essential that it be taken.

12 So this is not an ordinary bankruptcy case. It  
13 doesn't involve only commercial parties or issues. Purdue,  
14 under the Sacklers' leadership, is alleged -- and I  
15 emphasize alleged but by thousands of private and public  
16 plaintiffs, including all of the states in the country -- to  
17 have marketed and sold opioids in a manner that not only  
18 made the Sackler family rich almost beyond imagination, but  
19 also caused thousands of people in this country to suffer  
20 with an addiction injury and death, is alleged to have  
21 caused harm estimated by some in the hundreds of billions or  
22 trillions of dollars.

23 If the settlement framework were adopted, it would  
24 result in every single member of the Sackler family,  
25 including every single covered person and all of their



1 trusts and affiliates being absolved of responsibility and  
2 liability for the opioid crisis for all time. Under the  
3 settlement framework, the Sackler family would remain  
4 billionaires many times over, largely as a result of  
5 Purdue's activities. Now these are circumstances that the  
6 committee submits, perhaps uniquely, justify searching --  
7 perhaps burdensome, perhaps intrusive -- discovery into the  
8 Sacklers affairs, including all of the covered parties.

9           There are important creditor groups in these  
10 cases, Your Honor, including I believe some of the states  
11 that have indicated that they can't even seriously consider  
12 a settlement with the Sacklers that releases the Sacklers on  
13 any terms until comprehensive disclosures have been made by  
14 the Sacklers, respecting their and Purdue's role in the  
15 opioid crisis, the transfers that I referenced before from  
16 Purdue that the Sacklers and Sackler trusts and the current  
17 amount and location of their wealth.

18           Now, from the beginning of these cases, the  
19 Sacklers assured the official committee that they would make  
20 the disclosures that are necessary to satisfy its creditors  
21 on these points because they said that doing so was in their  
22 own interest. And we really took the Sacklers at their word  
23 and we gave them enough time -- and arguably, maybe we gave  
24 them too much time; if we did, that's on us -- to follow  
25 through, and it just hasn't happened.

1           The Sacklers point to millions of documents  
2       produced by Purdue and the MDL. But in these cases, other  
3       than the presentations that were prepared by their advisors  
4       and the IAC financial diligence, the Sacklers have produced  
5       very little. When the official committee filed its motion  
6       on Sunday, side A had produced about 700 documents, side B  
7       about 6,000. That 6,000 side B touts is including 50,000  
8       pages, but it's worth noting that that 50,000 pages includes  
9       17,000 that consist of documents supporting the advisor-  
10      created presentations that I referenced before and most of  
11      those documents are publicly available or were already  
12      produced by the Debtors in the MDL.

13           So by any measure, we submit, that the Sacklers'  
14      disclosures to date have been very disappointing. And it's  
15      unfortunate, but from the committee's perspective, the  
16      voluntary approach just hasn't worked. We tried and it  
17      hasn't worked. Based on our experience, the Sacklers are  
18      not going to engage in discovery in a manner that's  
19      sufficient, at least to the creditors, except under very  
20      specific compulsion by this Court in the form of orders on  
21      discovery.

22           And that brings me, Your Honor, to the first of my  
23      remaining three argument points, which is that a schedule  
24      for disclosures is required. Excuse me for a moment. In  
25      opposition to the committee's motion, the Sacklers made some

1 concessions for the first time. But, unfortunately, those  
2 concessions don't actually eliminate the scheduling  
3 controversy.

4 So side B, represented by Milbank and Joseph Hage,  
5 has agreed to review and produce 475,000 documents returned  
6 by applying official committee crafted search terms dated  
7 April 17th to ESI, including emails and text messages, of  
8 Richard, David and Jonathan Sackler from 1995 to the date  
9 each resigned from the board. Okay? The cutoff from the  
10 board resignation date was their original position -- theirs  
11 being side B -- and that's what generated the 475. Side B  
12 has agreed that they will -- again, for the first time in  
13 their papers in opposition to our motion, they agreed that  
14 they would complete the production of the 475,000 by July 1,  
15 2020.

16 But there are other aspects of the production to  
17 which they have not agreed to a deadline and have not  
18 proposed an alternative deadline. For instance, side B also  
19 has agreed that it will expand its search terms for those  
20 three custodians through the petition date, but it says it  
21 can't promise to finish their review by July 1 and, as I  
22 said, didn't offer an alternative deadline.

23 Your Honor, side B has had plenty of time to  
24 determine and provide to this Court information about the  
25 incremental burden that would be associated by expanding the

1 responsive period as they have agreed to do. They note in  
2 their papers that they only responded to our subpoena on  
3 April 21st, but the parties have been negotiating search  
4 criteria since February 4th, or at least side B and the  
5 committee has.

6 Side B admits that it has had the current  
7 committee search criteria since April 17th, close to 15  
8 days, which we submit under the circumstances of this case  
9 is more than enough time for them to have determined what  
10 this additional -- what this extension of the responsive  
11 period is going to do in terms of increasing their burden,  
12 and either say we can do this by July 1st or make a specific  
13 proposed based on an identified burden and an identified  
14 process for getting those documents reviewed for completing  
15 that production. But they haven't done that; they've really  
16 just said we want to leave it open ended with respect to  
17 that additional material.

18 Under the law on these discovery motions, Your  
19 Honor, when somebody is responding to a motion to compel,  
20 they actually have the burden of proving that the burden  
21 that goes along with the relief being sought by the moving  
22 party on the motion to compel is not reasonable. They have  
23 to come forward with specific information to show that it's  
24 not reasonable, and side B just hasn't done that with  
25 respect to the additional ESI that it's agreed to review and

1 with respect to its statement that it can't finish it by  
2 July 1st. But we submit that they should simply be ordered  
3 to complete that review and production by July 1st as well.

4 THE COURT: That, again, that's for the period  
5 after the board resignations and up to the petition date?

6 MR. HURLEY: That would be the additional ESI,  
7 correct.

8 THE COURT: But you've agreed on search terms and  
9 the like. This is just additional review for privilege and  
10 things like that.

11 MR. HURLEY: Correct.

12 THE COURT: Okay.

13 MR. HURLEY: Okay. There's another category with  
14 respect to side B, which is MDL search terms. So, I'm  
15 sorry, Your Honor, I'm going to have to switch from my  
16 headphones here which are running out of batteries. Just a  
17 minute, I'm going to put you on speaker. Apologies for  
18 that. Can you hear me, Your Honor?

19 THE COURT: Yes, clearly.

20 MR. HURLEY: Okay. There's another piece of this  
21 with side B, which is the MDL search terms. So the  
22 committee created search terms that were individually  
23 crafted to reach fraudulent conveyance and other, like,  
24 typical estate claims, and we asked parties to use those  
25 terms to look for documents. With respect to custodians who

1 had never had their documents search for any reason, we also  
2 asked them to use the MDL search criteria on those  
3 documents.

4 And side B has, in fact, agreed to do that and  
5 indicates -- they had told us at the meet and confer that  
6 the MDL search terms across the three custodians resulted in  
7 45,000 documents. It sounds like it's a little bit more,  
8 then maybe it's 60,000. Again, they have agreed to review  
9 and produce those documents yielded by the MDL search terms.  
10 But I, unless I'm misunderstanding and I'm sure you'll  
11 correct me if I am, they aren't committing to complete that  
12 review by July 1st. And, again, they don't offer any  
13 alternative deadline to complete the review.

14 Make the same arguments I made before about the  
15 burden on the responding party to actually prove that relief  
16 sought on a motion to compel is unreasonable. I would say  
17 they have failed to meet that burden and, again, should be  
18 ordered to complete their production by July 1st, including  
19 with respect to the MDL search term documents.

20 The final category from side B relates to the  
21 agreement by side B to produce ESI of a person named Stephen  
22 Ives, who is a longtime accountant and employee of the  
23 Sacklers and their, I believe, their family office. Side B  
24 has agreed that it will take on that it has possession,  
25 custody or control, if you will, of Mr. Ives' documents, but

1 has said that it doesn't yet know the burden that will be  
2 associated with running the terms against Mr. Ives. And so,  
3 again, can't promise to produce those documents by July 1st  
4 and, again, doesn't offer an alternative deadline or any  
5 information about what would be reasonable.

6 So we would submit again that what we need here is  
7 an order, a very clear and very specific order, that  
8 requires side B to begin and end its rolling production by  
9 date certain. We proposed May 15th and July 1 for the 475  
10 Sacklers, or side B obviously, agreed that they would do  
11 that. We think the same deadlines should be applied across  
12 the board.

13 Side A also has made some concessions for the  
14 first time in its opposition to the official committee's  
15 motion. Side A agreed to apply the MBL search terms and the  
16 official committee's search terms to ESI of four Sacklers --  
17 Theresa, Kathy, Mortimer, and Samantha -- beginning, they've  
18 agreed now to begin that search in 1995, the introduction of  
19 OxyContin. Previously, they had said they would cut it off  
20 at 2010 or 2008. But they have, since we made our motion,  
21 have relented on that and say they'll go back to 1995, and I  
22 understand through the petition date.

23 They have agreed to begin the production by May  
24 15th as we had proposed. And, again, they agreed to that  
25 for the first time in response to our motion, but they say

1 can't commit to any deadline for completion. Now, the  
2 documents compiled based on running the search terms against  
3 those four custodians from 2010 forward, we understand from  
4 side A, a total of 309,000 documents approximately. They  
5 will add additional documents by bringing that period of  
6 time back to 1995.

7 But just like side B, they haven't actually  
8 detailed the number of additional documents that that search  
9 will yield or what the additional burden of reviewing it  
10 would entail. They have just said, you know, because we  
11 don't know how many documents ultimately we're going to  
12 have, we can't commit to completing the production by July  
13 1st.

14 I don't want to be a broken record, but they have  
15 the burden under the case law when you make a motion to  
16 actually establish what their burden is and that it's not  
17 reasonable to comply with the relief that's sought by the  
18 committee, and they have not done that here. So we would  
19 submit that, again, they ought to be required to produce,  
20 make all of their productions with respect to these initial  
21 ESI review and complete them by July 1st.

22 I refer to it as initial ESI very deliberately,  
23 thinking that Milbank, whether there was some question about  
24 whether we were suggesting that absolutely every scrap of  
25 ESI that the committee is going to seek needs to be produced



1 by July 1st and that's absolutely not the case. As you can  
2 tell from the rest of our motion, the committee believes  
3 that there is substantial work that still remains to be  
4 done, both the Sacklers and others in terms of gathering  
5 additional documents that are going to need to be searched.  
6 Unfortunately because of where we are procedurally, we're  
7 not actually ready to queue up the specific dispute about  
8 ordering the production of particular volumes of documents  
9 with respect to the other categories, but this is, in fact,  
10 a request that there be a deadline set for the initial ESI.  
11 We believe there will be more, but obviously, that may be an  
12 issue that will be brought to the Court's attention at some  
13 point in the future.

14 So that covers my first point, Your Honor, which  
15 is really the nature of schedule. And I think absent a very  
16 concrete, and very specific and unmistakable schedule, it's  
17 just going to be very difficult to keep these cases moving  
18 forward.

19 THE COURT: How recently were these agreements  
20 reached?

21 MR. HURLEY: So, how recently were the agreements  
22 reached?

23 THE COURT: The years that -- the search terms to  
24 go back to 1995, et cetera.

25 MR. HURLEY: Relatively recently. I'm in a

1 struggle to give you the exact dates, Your Honor, but  
2 certainly relatively recently. The terms themselves that we  
3 are talking about, we revised them at the request of the  
4 Sacklers. You know, we would send over terms and they would  
5 come back and say this return is too many documents. The  
6 Committee would then take a crack at changing them, so they  
7 returned fewer documents. And we went through that process  
8 beginning on February 4th with Side B, and the last  
9 iteration of search terms that we supplied, the ones we're  
10 talking about now, we gave to Side B and actually to Side A  
11 as well on April 17th.

12 The actually commitments -- well, first of all,  
13 Side B's commitment to produce the 475,000 documents by a  
14 date certain was obviously very recent. They made that  
15 commitment after we filed our motion. And I would say that  
16 they made the commitment with respect to actually reviewing  
17 and producing the 475 without estimating how long it would  
18 take, probably within the past seven days. I apologize, I  
19 can't be more specific than that.

20 THE COURT: Okay. Do I have the same lawyers for  
21 the Side B and Side A that we did on the last matter?

22 MR. JOSEPH: Yes, Your Honor. Gregory Joseph for  
23 Side B.

24 THE COURT: Okay. Mr. Joseph, has there been any  
25 more thought as to how long it would take to complete the

1 review from the resignations to the petition date?

2 MR. JOSEPH: Your Honor, that one, I don't have a  
3 number for because that's very recent. And we are currently  
4 reviewing the 63,000 documents applying the MDL search  
5 terms, and Monday we're expanding it to the 475,000  
6 documents. And that's using 65 lawyers, maybe more than 80,  
7 but a minimum of 65 lawyers. And it's millions of pages.  
8 And we've committed to do that by July 1, that we saw their  
9 request in their brief. We made the commitment to review  
10 them before they filed that brief, so they knew that we had  
11 already agreed to do that.

12 You know, we have now ascertained that Mr. Ives'  
13 documents, subject to any tweaking of the search terms as  
14 they agreed to for others, produce 340,000 documents.  
15 That's millions more. And there's just a finite amount of  
16 time and people to be able to do all this. So we can get  
17 the first 535,000 done by July 1, but the truth is, we  
18 didn't get search terms agreed to until April 17th.

19 And we agreed to the search terms and we've agreed  
20 not only to this, we've already agreed, before they even  
21 filed their brief, to produce tax filings, financial  
22 statements, audit reports, bank records going back to 2008  
23 for 44 trusts and six companies that are ICSPs on the  
24 Raymond side, and for Richard, Jonathan, David and Beverly  
25 individually.

1 THE COURT: How soon would you be in a position to  
2 know reasonably when you would be able to provide the other  
3 information that you haven't committed to provide by July 1?

4 MR. JOSEPH: Correct. Your Honor, I mean, I've  
5 asked -- I mean, I can give you a preliminary estimate. I  
6 would like a chance to refine it. We believe that we can  
7 get this done by September 1. There is a lot involved here,  
8 but we believe we can get that done by September 1. I am  
9 going to say I may have to come back to the Court to ask for  
10 some leave on that, but that's why we've got up to 80  
11 lawyers looking at this information to try and turn it  
12 around as quickly as possible.

13 THE COURT: Well what -- I'm sorry. What if the -  
14 - when Mr. Hurley went through it, it seemed as if most of  
15 the information was covered by what you committed to do by  
16 July 1st. I didn't understand there to be a --

17 MR. JOSEPH: Well, the Stephen Ives information,  
18 Your Honor, that's millions of more pages.

19 THE COURT: Oh, okay. So that --

20 MR. JOSEPH: We just got it in in a reviewable  
21 form, I understand, last week. So that's a burden of  
22 millions of pages, on top of the millions of pages we've  
23 committed to for July 1, plus, you know, getting all the tax  
24 filings, financial statements and audit reports, and all  
25 that, going back to 2008. I just want to make sure we

1 produce everything, and we produce it completely. Nobody  
2 wants this process to get finished any faster than we do.

3 The family's reputation is never going to be  
4 rehabilitated ever while this process is going on, but  
5 there's only so much we can physically get done.

6 THE COURT: As far as Ives is concerned, is there  
7 information that you could prioritize after speaking to each  
8 other or him?

9 MR. JOSEPH: We can certainly talk about that.  
10 Remember that a lot of Ives' information, to the extent its  
11 communications with Richard, Jonathan and David, will be  
12 produced in the 475,000 --

13 THE COURT: Right. That's what I was thinking.  
14 Is there a way to...

15 MR. JOSEPH: We're happy to confer on that and  
16 we're happy to do this in some orderly fashion. But I'm  
17 just saying, the last thing that's true is any suggestion  
18 that we have not been cooperative in providing information.  
19 They're the ones that asked for what were two full days of  
20 presentations, you know, 1,100 PowerPoints. You know, I  
21 mean --

22 THE COURT: No, I... Look, I want to come back to  
23 the purpose of this discovery. There are two reasons for  
24 this discovery. The first is a occasion by the fact that  
25 the Debtors are proposing a plan that would provide a Debtor

1 release of claims that the Debtors' estates would have  
2 against the various Sackler parties. That goes to transfers  
3 by the Debtors and causes of action that the Debtors would  
4 have against those who had a fiduciary duty to the Debtors  
5 in the Sackler group, which wouldn't be all the Sackler  
6 group; it'd just be those who had a fiduciary duty.

7 The Committee already has the information from  
8 Purdue as to what it transferred, I gather, right? Mr.  
9 Hurley?

10 MR. HURLEY: We do have a report, a substantial  
11 report to that effect, Your Honor.

12 THE COURT: Okay. And as far as breach of  
13 fiduciary duty, that is limited to fiduciaries for the  
14 Debtors. So as far as Mr. Ives is concerned, he was not a  
15 fiduciary for the Debtors, right?

16 MR. HURLEY: Correct, Your Honor.

17 THE COURT: And as far as transfers, it's more --  
18 I mean, it's confirmatory, but in a sense the money has to  
19 start somewhere, and it starts at Purdue in this case,  
20 because it's money going out of Purdue. It would seem to me  
21 that except if you could identify stuff of his that is not  
22 duplicative of the other Sackler discovery that's committed  
23 to be done by July 1st, it's less important to get his  
24 information on the same timeframe.

25 MR. HURLEY: Mm hmm. Well, Your Honor --

1 THE COURT: But let me -- on the first reason why  
2 you're seeking discovery, which is a perfectly legitimate  
3 reason, which is transfers by Purdue that might be avoidable  
4 or breach of fiduciary duty claims.

5 The second reason is that the plan that is being  
6 considered to be proposed contemplates a release of third-  
7 party claims against a huge group of people, including the  
8 Sacklers, but also affiliates and the like. And those would  
9 be claims that the Purdue creditors would theoretically have  
10 against the released parties.

11 I could see why getting discovery of Mr. Ives'  
12 information might be relevant there, although it goes more  
13 to contentions that the Sacklers themselves would be making  
14 that, well, you know, the grounds that you have for third-  
15 party claims against us, you know, and we know the responses  
16 to. So tell me a little bit more why it's critical to get  
17 his information by a date certain at the beginning of July  
18 as opposed to say at the end of September>

19 MR. HURLEY: Sure, absolutely, and I want to  
20 address that question very specifically. But let me just  
21 start by making sure that something that may not be clear to  
22 Your Honor yet becomes clear.

23 So as I said with respect to the other custodians  
24 we talked about, we were provided what are called hit  
25 reports by their lawyers, saying you gave us search terms,

1 the search terms yielded X number of documents. Akin Gump  
2 would then review those hit reports and make an effort to  
3 narrow or carved down the responsive materials so it would  
4 be less burdensome to actually review and produce.

5 With respect to Mr. Ives, we actually haven't had  
6 a chance to engage in that process yet. I think what  
7 happened -- and I'm sure counsel will have more information  
8 about this he can share if he wants to -- but my  
9 understanding is a lot of the information was hosted at a  
10 company that they weren't able to get access to, or there  
11 tech person was not able to get access to, because of what's  
12 been happening with COVID-19.

13 So it sounds like only very recently have they  
14 actually obtained the Ives documents so that they can run  
15 the searches. And we at the Committee haven't yet seen a  
16 hit report. But we would be very happy to review that hit  
17 report and see if we can work with Milbank to come up with a  
18 compromise that would result in something far less  
19 burdensome than what they're talking about. And the hit  
20 reports are pretty good. They let you see which terms  
21 they're picking up, a lot of documents, et cetera.

22 THE COURT: Okay.

23 MR. HURLEY: And there's one other point of  
24 clarification. There's software that allows you to de-  
25 duplicate a whole group of emails against another group. So



1 we'd be very clear and certain to not be having them produce  
2 documents twice.

3 Now let me just addressed briefly the question  
4 about relevance. So Mr. Ives --

5 MR. HUEBNER: Mr. Hurley?

6 MR. HURLEY: Yes.

7 MR. HUEBNER: Mr. Hurley? Let me, if I may --  
8 it's Marshall Huebner. Let me -- before we switch topics,  
9 because there -- just for 20 seconds, which I think will  
10 help the Court and other parties, and I do want to make sure  
11 journalists don't get it wrong.

12 So, Your Honor, just as a reminder, because I  
13 think we're going to be going to be going to a broader  
14 place, it sounds like, for Your Honor before this day is  
15 over. Number one, Mr. Hurley was actually overcautious.  
16 The Debtors put on the public docket the full report of  
17 every penny that ever went to the shareholders, starting  
18 from a period rather a long time ago. I believe it was  
19 January 2008. That total is \$10.4 billion-plus-odd dollars.  
20 That is not private. We put it out there for everyone to  
21 see.

22 And as the report itself makes clear, that was  
23 cross-checked, I think, 12 different ways by a team of  
24 dedicated professionals working only for that Committee. So  
25 with respect to transfers out to the Sacklers, you know, we

1 designed this whole process, just as a reminder to the  
2 Court, so that the data would be absolutely literally down  
3 to one-dollar transfers.

4 What is very not public, just as this hearing  
5 continues, is the wealth presentation that was made to the  
6 parties bound by the protective order. So I wanted to thank  
7 Mr. Hurley for his extreme caution on confidentiality. But  
8 the Debtors actually thought that it was extremely important  
9 to catalog all distributions and transfers and have it be  
10 out there for the entire world to see. And as the Court  
11 remembers, something like 18,000 professional hours were  
12 spent by forensic specialists doing that.

13 There is another report coming, just to remind all  
14 parties and the Court -- and that report actually should be  
15 coming quite soon -- which is all other non-cash  
16 distributions or contractual arrangements that potentially  
17 are undervalued transactions that the core parties in this  
18 case, the Committees (indiscernible) the State's consenting  
19 and dissenting, and of course UCC will also be getting.

20 We are very focused on not having to have 2, 3, 4,  
21 5, 6 parties retread the same ground at extraordinary  
22 expense to pull the data. Which is not at all to say -- and  
23 I want to be super clear -- I have no dog in the fight at  
24 all on the additional items that the Committee of Non-  
25 Consenting States are seeking, not for a nano second.

1 I'm just reminding people that the Debtors'  
2 Special Committee is already going to be putting out to give  
3 people comfort that there is going to be a huge amount of  
4 data generated already about transfers, contracts,  
5 dividends, upstreams, transactions and royalties that is  
6 being done in a completely objective Special Committee  
7 dedicated advisor way.

8 So I want to just thank Mr. Hurley, but you know,  
9 let everyone know, because I don't want journalists to  
10 misremember and put out things that, you know, still don't  
11 know -- it's still not public how much Sackler family  
12 dividends from the company. That was a huge report that was  
13 put out many months ago on the docket of the case.

14 So, Mr. Hurley, sorry to interrupt you, but I  
15 thought that might be helpful before we move to a new topic.

16 MR. JOSEPH: Your Honor, Gregory Joseph. If I  
17 might just say, since that was done with the public in mind,  
18 that about half of that 10 billion did go to taxes.

19 THE COURT: Okay. Mr. Hurley, I think you were  
20 about to address the relevance point.

21 MR. HURLEY: I was, Your Honor. Thank you. So  
22 the requests which are -- or the ESI of Mr. Ives is actually  
23 not -- it's seeking to like identify transfers, that sort of  
24 thing. Our understanding is that Mr. Ives has been a close  
25 financial advisor and accountant for the Sackler family, I

1 believe for decades, and would have information related to -  
2 - we think, anyway -- things like estate planning decisions  
3 made by the Sackler's, things like the Sacklers' wealth and  
4 where it's located, information that we think will be really  
5 clearly relevant to things, including potential fraudulent  
6 conveyance and other fraudulent conveyance claims.

7 I do want to emphasize again --

8 THE COURT: I'm sorry. I have to interrupt you  
9 here. Why? I don't get that.

10 MR. HURLEY: Well, so --

11 THE COURT: It would be relevant to perhaps a  
12 remedy, tracing money, but as far as the transfers  
13 themselves, it would --

14 MR. HURLEY: No, I agree, Your Honor. I'm sorry,  
15 I may have misspoken. This discovery is not directed at  
16 identifying the transfers themselves.

17 THE COURT: Okay. It's really step two?

18 MR. HURLEY: Pardon me?

19 THE COURT: It's really step two of a fraudulent  
20 transfer analysis, which is recoverability.

21 MR. HURLEY: Well, it goes to recoverability; it  
22 may very well go to Sackler family state of mind in terms of  
23 why decisions were made to make particular transfers. So,  
24 you know, I think there's a host of fraudulent conveyance  
25 related issues that could be implicated.

1 But I do just want to be really clear. We have  
2 been and remain willing to negotiate reasonably about scope.  
3 So I guess the concern that I have is everybody has a lot to  
4 do, and if there isn't a deadline imposed, things tend to go  
5 by the wayside. So with Mr. Ives, for instance, if we could  
6 have the opportunity, say in the next week, to get a hit  
7 report with respect to Mr. Ives and try and do our best to  
8 narrow that down substantially, and then maybe an  
9 opportunity to bring that issue, if it's necessary, back to  
10 the Court so that we have some resolution, which obviously  
11 in part will depend ultimately on the number of documents  
12 that we're proposing be reviewed --

13 THE COURT: Okay. That sounds reasonable to me.  
14 I think that's what should happen. And with regard to the  
15 other stuff --

16 MAN 1: Your Honor --

17 THE COURT: -- the deadlines that have been agreed  
18 are agreed.

19 MR. HURLEY: I believe that's correct, Your Honor.

20 THE COURT: Okay. And then as to Side A, is there  
21 any sense of when you would be complete at this point?

22 MS. BALL: Your Honor, Jasmine Ball, from  
23 Debevoise & Plimpton, for Side A. We don't have a deadline  
24 yet that we can actually propose. We did not agree until  
25 literally, as Mr. Hurley noted, their filings to go back

1 further. And our dataset, as we've explained to Mr. Hurley  
2 previously, that was previously gathered before COVID only  
3 went back to 2010. And so we have actually in the last week  
4 been talking with our vendor about how and whether we can  
5 get the additional when, you know, we can get the additional  
6 data back to 1995 or for as long as there was actually data  
7 in those email accounts.

8 And they're trying to work through getting us  
9 information as to what they would need to do in this new  
10 environment to actually pull. Because they do not have --  
11 there was a question from Mr. Hurley -- they do not have on-  
12 site all of the data from each of the five custodians that  
13 we agreed to gather.

14 One of them, they don't have any data on, and for  
15 the other four, there were date restrictions put in on data  
16 that was pulled. So they don't actually have it on-site and  
17 they're going to have to go out and get it, at least from a  
18 number of them. So we're working through that,  
19 unfortunately, right now

20 THE COURT: Do you have a sense of how long it  
21 would've taken if it was just going back to the dates that  
22 you had proposed?

23 MS. BALL: Well, we had -- as Mr. Hurley said, we  
24 had 309,000 documents. We have been looking at the numbers  
25 as to whether we could get them done by July 1st, as the Bs

1 have been indicating as well. But as Mr. Joseph noted, it's  
2 millions and millions of documents. But we're trying to get  
3 that information to Mr. Hurley.

4 THE COURT: Okay. I think we should -- for that  
5 universe, it should be July 1, and you and Mr. Hurley should  
6 have the same type of process for the more recently-agreed  
7 group, just as what's going to happen with the Ives group,  
8 to come up with a reasonable deadline, hopefully. And if  
9 you can't find an agreement, the parties should come back  
10 to me promptly.

11 MS. BALL: Understood, Your Honor.

12 THE COURT: Okay.

13 MR. HURLEY: Thank you, Your Honor. And by the  
14 way, I misspoke, and I appreciate Ms. Ball for correcting  
15 me. The custodians that they agreed to run those terms  
16 against were in fact not just the four identified. It was  
17 also -- so it was Theresa, Kathy, Mortimer, Samantha and  
18 Ilene, I believe, just for the record. Thank you.

19 So that brings me, Your Honor, to the question of  
20 custody or control over the documents in the immediate  
21 possession for the IACs. So in response to the subpoenas,  
22 the Sacklers have contended that they lack possession,  
23 custody or control over those documents.

24 The contention really is, I guess, what we view as  
25 an about-face from what the Sacklers represented in the case

1 stipulation with the Committee. And in that stipulation,  
2 that they just flatly promised that they were going cause  
3 the IACs to deliver documents to the Committee and to  
4 others. You know, that was with respect to primarily IAC  
5 valuation documents that I think the Sacklers, frankly,  
6 believed would be in their interest to make a part of the  
7 record in these cases.

8 It was only when we served the subpoena that  
9 called for a host of documents that the Sacklers may,  
10 frankly, not want to produce, that they claimed that all  
11 they can do is ask the IACs to provide documents, but the  
12 IACs may say no.

13 Asking for voluntarily production is not good  
14 enough, Your Honor, when a subpoena is served. It imposes  
15 diligence and other legal obligations on the recipient with  
16 respect to all documents in the recipient's control. And we  
17 submit that they have possession, custody or control in the  
18 initial covered Sackler persons, and they have to understand  
19 by order of this Court that if they don't comply with their  
20 obligations under the rules with respect to those documents,  
21 they will be subject to the power of this Court.

22 I want to briefly address the law and facts that  
23 we think clearly establish that the Sacklers have  
24 possession, custody or control. The legal standard is not  
25 disputed. A party has possession, custody or control over



1 documents in the immediate possession of another if the  
2 party has the legal right, authority or practical ability to  
3 obtain documents in that other person's immediate  
4 possession. And the record that's already before the Court,  
5 Your Honor, is more than sufficient to conclude that the  
6 Sacklers have that level of control as matter of law.

7 First, I would point to Paragraph 1 of the case  
8 stipulation that I referenced before between the Debtors,  
9 the shareholder parties and the Official Committee. And  
10 Paragraph 1 provides, "The shareholder parties represent  
11 that the initial covered Sackler persons collectively own,  
12 directly or indirectly, each of the IACs." Now, even the  
13 Sacklers acknowledge that this factor points in favor of  
14 possession, custody or control over the IAC documents. But  
15 there is more.

16 In our motion, the Committee suggested our  
17 understanding that the Sacklers also have the power to  
18 appoint and replace directors with individual IACs. And we  
19 don't have all the documents, but we were able to submit an  
20 example from Napp Pharma Holdings, which is an IAC, that  
21 appeared to prove that in fact the Sacklers have the ability  
22 to --

23 THE COURT: Could I --

24 MR. HURLEY: Yes.

25 THE COURT: Could I cut through this?

1 MR. HURLEY: Absolutely.

2 THE COURT: It seems to me that you should do a  
3 two-step process here, particularly since this has been  
4 offered up by the B-Side parties. B-Side parties say that  
5 they will direct the IACs, using whatever authority they  
6 have, which all the authority they have, to produce the  
7 documents. Let's see what happens and what reason is given  
8 if there is a nonproduction, and then we can come back and  
9 decide whether that nonproduction is within the control or  
10 not of the Sacklers.

11 MR. HURLEY: So, Your Honor, that approach raises  
12 a couple of concerns from the Committee's perspective. So  
13 first of all, I think I want to be -- it's got to be clear,  
14 I'm not sure that the Side B actually is -- at least Side B  
15 -- is actually saying that we're going to ask the IACs to  
16 provide documents responsive to the requests. I believe  
17 they actually identified a subset of 20 of the subpoena  
18 requests that they say they're prepared to pass along to the  
19 IACs and asked for a "voluntary production."

20 THE COURT: Well, let's stop there. Is that the  
21 case? I mean, Page 3 of the response says, the RICSPs who  
22 hold beneficial interest in the IACs have agreed to use  
23 whatever authority they have to instruct the IACs to produce  
24 documents to the UCC, in accordance with the RICSP's  
25 responses. So is there some hidden -- is there some group

1 that you're not going to ask them to produce?

2 MR. HURLEY: Your Honor --

3 MR. JOSEPH: Your Honor, Gregory Joseph, for Side  
4 B. We've already sent demands to the Board of Directors  
5 through their counsel, including all of the documents and  
6 the responses and objections, and just given them to them.  
7 And we fully expect them to comply.

8 THE COURT: Okay. So what's the other problem,  
9 Mr. Hurley?

10 MR. HURLEY: Well, so, Your Honor, I'm actually  
11 looking at the letter that Milbank submitted, and they say  
12 their responsive objections stated that the RICSPs would  
13 request from the IACs documents responsive to over 20 of the  
14 enumerated document requests, which strongly suggests to me  
15 that they're requesting documents responsive to some but not  
16 all for the requests.

17 THE COURT: I'm sorry. Which letter are you  
18 referring to?

19 MR. HURLEY: This is the Milbank letter, Your  
20 Honor.

21 THE COURT: To who?

22 MR. HURLEY: To the Court.

23 THE COURT: No, I'm quoting from the response.  
24 And Mr. Joseph just told me they directed them to produce  
25 everything. So let's move on.

1 MR. HURLEY: Okay, fair enough. So let me just --  
2 with respect to --

3 MR. JOSEPH: Your Honor, Gregory Joseph. I just  
4 want to be clear. We have interposed responses and  
5 objections and we've sent those along also. We expect that  
6 there's going to be a conferral process for all these  
7 documents. And we haven't even conferred on our responses  
8 and objections for our documents. But subject to that, we  
9 haven't withheld any document requests. We've sent  
10 everything over, together with the responses and objections.

11 THE COURT: Well, let me put it differently, Mr.  
12 Joseph. If you agree on behalf of the Sacklers to resolve  
13 an objection in a particular way, you're not going to direct  
14 -- or your clients are not going to direct the IACs to  
15 resolve it differently, right? It's going to be resolved  
16 the same way.

17 MR. JOSEPH: Correct, Your Honor.

18 THE COURT: Okay.

19 MR. JOSEPH: But we have 50 countries' law  
20 involved. I just don't know local law in every  
21 jurisdiction. So we're not going to direct them at all to  
22 do something different.

23 THE COURT: Right. But you're going to direct  
24 them to do what is consistent with what I directed you to  
25 do or you've agreed to do and -- this goes to the control

1 point -- they may be under an obligation not to produce it  
2 for some reason based on their own local law. Is that fair?

3 MR. JOSEPH: Yes, Your Honor.

4 THE COURT: But other than that, you're not going  
5 to give them different instructions.

6 MR. JOSEPH: No. There's not going to be any lack  
7 of transparency. We're not going to be behind the scenes  
8 telling them to do something different from what you've  
9 ordered us to do or we've agreed to do.

10 THE COURT: Okay. So what was your other concern,  
11 Mr. Hurley?

12 MR. HURLEY: So, Your Honor, the concern is that  
13 we don't have -- the committee doesn't have a party or  
14 counsel or negotiate with that is negotiating on behalf of  
15 the party that's subject to the Court's power, or even  
16 counsel that's appearing here. And what they've done in the  
17 past, meaning the Sackler's counsel, is asked us to deal  
18 directly with Norton Rose as counsel for the IACs. And we  
19 tried that at first, and it was not -- it wasn't  
20 satisfactory. We had some --

21 THE COURT: Can I interrupt you again?

22 MR. HURLEY: Sure.

23 THE COURT: It is conceivable to me that after the  
24 Sacklers direct the IACs to produce document X, which they  
25 have agreed on their end should be produced, at that point,

1 that company will say no, we're not going to produce that  
2 because that's not required under Thailand law. And at that  
3 point I'll decide whether they have -- the Sacklers -- have  
4 the power to compel them to produce it. I'm not going to  
5 decide it in a vacuum, because the facts matter.

6 MR. HURLEY: Understood. So an issue is that when  
7 a party receives a subpoena, they immediately have  
8 obligations with respect to documents in their control with  
9 respect to that subpoena. For instance, do a reasonable  
10 investigation to try to determine what documents exist that  
11 are responses and what burden would be associated with  
12 producing those documents, and then to meet and confer in  
13 good faith with the requesting party to try to arrange some  
14 kind of compromise. And a major concern here is that nobody  
15 is undertaking that diligence and investigation that has to  
16 occur for us to even have a reasoned conversation about what  
17 should be produced from the IACs.

18 THE COURT: Okay. I view that as a separate  
19 point. What happened with the -- I understand what you're  
20 saying about the Norton Rose thing, but from the Side B  
21 perspective, what happened there? It sounds like they sort  
22 of disappeared.

23 MR. JOSEPH: Your Honor, Gregory Joseph. We are  
24 not counsel to the IACs under the -- we represent the  
25 parties that received the subpoena, but we're not counsel to

1 the IACs. I can't address a specific conversation between  
2 Norton Rose and Mr. Hurley.

3 THE COURT: Okay. Well --

4 MR. JOSEPH: I can tell you that we have issued a  
5 demand to the board of directors to comply with the  
6 subpoena.

7 THE COURT: Well, I think it should go further and  
8 direct the IAC's directors to appoint one or more counsel to  
9 interact with Akin Gump unless they're prepared to defer to  
10 you on this with regard to the subpoenas.

11 MR. JOSEPH: That's fine, Your Honor. We will  
12 issue that direction.

13 MR. HURLEY: Your Honor, can we go one step  
14 further and ask for a direction that the IACs consent to  
15 have subpoenas served on them in these cases so that there  
16 is process active against them? And then obviously they  
17 would still have all their objections that any party can  
18 make to respond to a subpoena. But at least they would be  
19 before the Court.

20 MR. JOSEPH: Your Honor, Gregory Joseph. The  
21 problem is I don't know what local law is in 50 different  
22 countries and whether that's problematic. I know certain  
23 kinds of actions are problematic.

24 THE COURT: Well, I think that, again, in the same  
25 way you're directing them without hiring a counsel or

1 counsels, a joint counsel or separate counsel, they can be  
2 directed to promptly accept service of a subpoena or explain  
3 why they can't.

4 MR. JOSEPH: That we can do, Your Honor.

5 THE COURT: Okay.

6 MR. TROOP: Your Honor, this is Andrew Troop. And  
7 I'm not sure that it's -- I just think you need to know this  
8 fact as you think about all of these issues. And that is  
9 that I appreciate the legal niceties of the arguments that  
10 Mr. Joseph is making about the various IACs. But as a  
11 practical matter in this case more than once, and in fact as  
12 recently as yesterday, Norton Rose has responded to requests  
13 for information about the IACs saying that it needs to get  
14 direction from family counsel. And yesterday there was an  
15 issue. I made the request to family counsel and within  
16 hours I got a response that said, oh, we don't have an  
17 objection, expect to hear from Norton Rose that you're going  
18 to get the documents. There's a level of practicality here  
19 and sufficiency --

20 THE COURT: So I appreciate that information. I  
21 just did not have a whole lot of information about what was  
22 going on with Norton Rose. The impression I got from the  
23 letter is that they basically ceased being involved. It  
24 seems to me that after this direction, promptly after it,  
25 whoever is coordinating this -- I don't know if it's Mr.



1 Joseph or Mr. Uzzi. Whoever is doing it from the family  
2 side should get on a call with Mr. Hurley and Mr. Troop and  
3 the lead person from Norton Rose and work through a process  
4 for dealing with this.

5 MR. HURLEY: Your Honor, can it also be provided  
6 that we'll get a copy of the direction letter and the  
7 direction letter will issue --

8 THE COURT: I would assume that would be the case.

9 MR. HURLEY: Okay.

10 THE COURT: I would assume that would be the case.

11 MR. HURLEY: And perhaps that the direction letter  
12 would issue by a date certain?

13 THE COURT: I'm assuming Monday or Tuesday.

14 MR. HURLEY: Thank you, Your Honor.

15 MR. TROOP: Yeah. And, Your Honor, for the  
16 avoidance of doubt where we're talking about we, again, I  
17 assume all of this is covered by the pre-existing court  
18 orders and the --

19 THE COURT: This is the --

20 MR. TROOP: It's the four.

21 THE COURT: Yeah, four parties --

22 MR. TROOP: Exactly. Right. So we always means  
23 four. Because, again, the Debtors obviously are in a  
24 slightly different role. But all the information and all  
25 the discovery is obviously critically important to the work

1 of the (indiscernible) committee and the (indiscernible).

2 THE COURT: And it's critical that the parties  
3 coordinate.

4 MR. TROOP: Correct.

5 THE COURT: Good point.

6 MR. TROOP: Thank you, Your Honor.

7 THE COURT: So I think that covers category two in  
8 the letter.

9 MR. HURLEY: I believe that's right, Your Honor.  
10 Thank you. So that brings me to what perhaps will be the  
11 last category that maybe there will be questions about the  
12 redactions.

13 So from the committee's perspective it's critical  
14 that the other related cover parties participate in  
15 discovery, not just in the cases -- not just the initial  
16 covered Sackler parties. I just want to remind quickly the  
17 Court who the covered parties are. Under the case  
18 stipulation, each shareholder party is required to contact  
19 every known issue of Mortimer and Raymond and their trusts  
20 and affiliates, provide a copy of the case stipulation, and  
21 give them a chance to opt out of the stipulation. And the  
22 shareholder parties certified that they did that. And no  
23 Sackler ever filed, at least to the committee's knowledge, a  
24 notice opting out. So they're all covered parties. They  
25 are all beneficiaries, direct or indirect, of the billions

1 in transfers from Purdue. They're all enjoying the  
2 protection of the Court's injunction, and they all intend to  
3 seek releases.

4 Now, the stipulation itself contemplates that  
5 covered parties will produce documents to the committee and  
6 the Debtors, including, for example, in Paragraph 17 where  
7 they agree to provide a host of documents, which actually  
8 includes IAC books and records. The official committee's  
9 informal and formal requests both sought documents from all  
10 covered parties. And we have a basis for believing that all  
11 family members could indeed have information of great  
12 relevance to the cases whether or not they were employed by  
13 or had a role at Purdue.

14 So, for instance, the broader Sackler family  
15 apparently had beneficiary meetings, that included Purdue  
16 directors and advisors, to discuss Purdue's affairs.

17 I would direct Your Honor's attention to Exhibit  
18 19 to the committee's submission, which is an email  
19 attaching and discussing an agenda for one such meeting in  
20 May of 2012. That meeting is described as a, quote,  
21 "Special family/board/lawyers/et al. meeting". The agenda  
22 includes first, distribution policies. The fourth item is  
23 opioid direction. The sixth is senate investigation. The  
24 seventh, divestment diversification. Eighth, how do we  
25 measure performance of the business? Fourteen, future

1 plans.

2 We understand that there were meetings of this  
3 kind with some regularity. And while the Sacklers have  
4 tried to confine discovery just to directors of Purdue, any  
5 Sackler who attended a meeting like the one I've just  
6 described could very well have information of critical  
7 relevance to these cases, including the state of mind of the  
8 Sacklers and the motivation for very important decisions  
9 that were made in these cases about things like transfers of  
10 money that happen to be transfers away from creditors of  
11 Purdue. And that's true regardless of whether they worked  
12 at Purdue.

13 Now, it is true that as a compromise in the meet  
14 and confer, we proposed narrower search terms for these  
15 additional related covered parties and proposed that in a  
16 first instance we would reduce the number of covered parties  
17 just to those who had at one time a Purdue email address.  
18 We actually -- every time that we made that offer, we were  
19 very clear that we didn't agree that it was a principled  
20 distinction, but that it was a compromise that would reduce  
21 the number of actual custodians.

22 The Sacklers never made a counter. They just said  
23 no. And we told them that if they refused our compromise  
24 and we were required to make a motion to compel that our  
25 motion would not be limited to the compromise that we had

1 proposed.

2 But that doesn't mean, Your Honor, that the  
3 committee isn't prepared to be reasonable. Once orders are  
4 entered in the case that ensure one way or the other that  
5 covered party documents will at least be a part of the case  
6 and we can have a reasoned discussion about the scope of  
7 disclosures, if any, that should be provided by them, we are  
8 absolutely prepared to meet and confer in good faith over  
9 the scope of searches and productions.

10 So the committee sees at least two ways to address  
11 this issue to make sure that these covered party documents  
12 are at least available for potential consideration for  
13 production by the parties and maybe ultimately by the court.

14 So one is what we proposed in the letter, which is  
15 directing the initial covered Sackler persons to ask their  
16 related covered parties. Give them a copy of the subpoena  
17 and ask them if they will make documents that are in their  
18 immediate possession available for potential review and  
19 production. Subject of course to the ordinary set of  
20 objections, relevance, burden, et cetera. But just make  
21 them available so that a negotiation can be had over what  
22 should or should not be produced. And then have the initial  
23 covered Sackler persons document the response. So if a  
24 related covered party refuses that request, that refusal  
25 should be documented and it should be made available to the

1 Court and parties in these cases for consideration in  
2 connection with, for instance, whether a release should be  
3 granted to that covered party, whether the Court's  
4 injunction should continue to protect that covered party.  
5 And so the committee believes that is a way forward.

6 Alternatively, the committee has asked repeatedly  
7 of the shareholder parties that they provide us with a list  
8 that identifies every covered party, that identifies, to the  
9 extent they know, counsel for every identified covered party  
10 and whether such counsel is authorized to accept service of  
11 a subpoena on behalf of the covered party.

12 Now, we understand, or we believe anyway, with  
13 respect to a lot of these -- maybe many, maybe close to all  
14 covered parties, that they may well be represented by  
15 Milbank and Debevoise themselves. But that's obviously part  
16 of the information that we would be seeking. And at least  
17 if we had that list, the committee, we would know how to  
18 take steps to try to engage with someone who actually has  
19 knowledge of the information that those additional covered  
20 parties may have with respect to these cases and we can have  
21 a discussion about what is appropriate for production.

22 And I would note, you know, you have here the  
23 initial covered Sackler person, side A and side B, opposing  
24 really any investigation into the documents that these folks  
25 have. While denying that they have the ability to get their

1 documents, they also seem pretty confident about denying  
2 that those materials -- that they would have relevant  
3 materials. We think we have reason to believe that they do.  
4 But it's not like we're going to just make a motion instant,  
5 we have somebody who can negotiate on their behalf. We want  
6 to talk about it. And if we can't reach a reasonable  
7 arrangement, we'll bring it to the Court. But it has -- the  
8 committee's view anyway, there has to be a process to allow  
9 the meet and confer to play out and for there to be an  
10 opportunity for a decision about what the proper scope of  
11 disclosures for these folks would be.

12 THE COURT: So you don't have a list of who these  
13 people are?

14 MR. HURLEY: We do not, Your Honor.

15 THE COURT: Okay.

16 MR. HURLEY: We have asked several times. And the  
17 information is definitely available, because by definition  
18 the shareholder parties reached out to them and gave them a  
19 copy.

20 THE COURT: right.

21 MR. HURLEY: So they definitely -- right. So I  
22 think it should be relatively easy for them to give a list  
23 and identify counsel, which is what we've asked for.

24 THE COURT: Right. Okay. So I can certainly  
25 imagine some discovery from these people. Is it all people

1 or is there other entities involved, too? It's just people  
2 I guess, right?

3 MR. HURLEY: By definition it can include  
4 entities. I don't know if it does, because we don't have a  
5 list. But the contact requirement was with respect to known  
6 issue of Mortimer and Raymond and their -- I believe it was  
7 like their affiliated trusts and corporate entities,  
8 something like that.

9 THE COURT: Okay.

10 MR. HURLEY: So it could include entities, but I  
11 don't know if it does.

12 THE COURT: All right. So I can imagine that in  
13 addition to relevance, which is a low standard, the burden  
14 would not be material, at least in some respects. I could  
15 also imagine, however, that it would be perfectly reasonable  
16 to respond to the communication from your first alternative  
17 with a no and that that would not be cause necessarily to  
18 say that they haven't done enough to comply with the  
19 requirements to get a release, just that they were not  
20 prepared to respond to discovery that, as you said, could  
21 easily be overly broad.

22 So it would seem to me there should be some  
23 mechanism, like we just dealt with with the IACs, where they  
24 can engage you about what is appropriate to be produced.  
25 Again, looking at the purposes for this discovery as far as



1     avoidable transfers are concerned, we know where the money  
2     went originally. It's not clear that there would be any  
3     reason at this point to track it beyond there if the money  
4     is going to be appropriately dealt with in a settlement.  
5     And at best it's relevant only with respect to a defense by  
6     an immediate or intermediate transferee, which is probably  
7     not worth either side pursuing at this time.

8             I don't think any of these people were  
9     fiduciaries, right? Almost by definition they're not  
10    fiduciaries. It's the other -- it's the ICSPs who were  
11    within the subset of fiduciaries. So again we are focusing  
12    on whether there are claims either against these people on a  
13    reasonable basis that creditors of Purdue would have, or --  
14    and this is where I think it might be really worth the  
15    candle -- they have information that wouldn't be produced  
16    already as to whether there are claims against one or more  
17    of the ICSPs.

18            So it would seem to me that it would be pretty  
19    important to get down to those brass tacks with someone on  
20    their end to see whether there even is an issue as to making  
21    production. I mean, it would seem to me that if they want a  
22    release, they should produce something like their notes of  
23    meetings where potential liability of either themselves or  
24    others who would be getting a release would be discussed.  
25    Although of course how much of that would be privileged is

1 another story.

2 So that's my initial take on this, that there  
3 shouldn't be an absolute bar to getting documents from them,  
4 but at the same time there should be a process similar to  
5 the IAC process where they're put on notice that they need  
6 to step up and at least get someone to discuss with you --  
7 and again, we've defined you as the four -- what discovery  
8 is warranted.

9 MR. HURLEY: That's really all we're looking for,  
10 Your Honor, is a way to be able to do that.

11 THE COURT: Okay. So again, Mr. Joseph, I don't  
12 know if you are the person that is in charge of interacting  
13 with the Sackler-covered parties or if it's someone at  
14 Milbank or -- you know. But I think that needs to happen.  
15 They need to know that it needs to happen if they're going  
16 to expect getting a release.

17 MR. JOSEPH: Your Honor, Gregory Joseph. I just  
18 want to correct one thing Mr. Hurley said. And we of course  
19 will do whatever the Court wishes us to do. But we did give  
20 them a list and a letter I'm looking at from April 23  
21 identifying the additional covered Sackler parties. On our  
22 side it's 16 individuals, six of whom are minors, and ten of  
23 whom never had any involvement at Purdue. And the others  
24 were things like summer interns. But that doesn't mean that  
25 we can't see if they have notes from meetings in years gone

1 by about beneficiaries or anything.

2 THE COURT: But again, I don't know if you all are  
3 representing them or if they have separate counsel. But --

4 MR. JOSEPH: We represent some, Your Honor. We  
5 represent some, but not all.

6 THE COURT: Well, maybe the first step -- because,  
7 look, logically I would assume, but maybe this is wrong,  
8 that someone who would actually go and hire your firm or  
9 Milbank would be more eager to get a release and worried  
10 about litigation than someone who is ten years old. You  
11 know --

12 MR. JOSEPH: Your Honor, there are just some  
13 technical issues. One of the additional covered Sackler  
14 parties is an ex-wife. She is separately represented.

15 THE COURT: Okay.

16 MR. JOSEPH: I mean, there are just practical  
17 issues.

18 THE COURT: I would think that some of this  
19 discussion could take place right away as to the people that  
20 you or Milbank represent and that the others should be  
21 promptly notified that if they actually do expect to get a  
22 release, they need to engage in this process at least to  
23 discuss what would be reasonable discovery. And if they  
24 said, well, you know, that's fine but we're going to force  
25 you to serve us. I may not approve a release for them at

1 that point. I don't know. That's premature to decide at  
2 this point. But I think the process needs to start now.

3 MR. JOSEPH: Understood, Your Honor. And we look  
4 forward to getting specific requests tailored to these  
5 people.

6 MR. HURLEY: And, Your Honor, it's Mr. Hurley  
7 again. We would respectfully ask for an instruction that  
8 Side A provide a list of all covered parties, and to the  
9 extent they know, identify counsel for the covered parties.  
10 I would actually ask that the instruction be given to Side B  
11 as well. I know that we got a list from Side B, but my  
12 understanding was that it was not represented to be a  
13 comprehensive list of all covered parties. So I think it  
14 would be very valuable for us to at least note definitively  
15 who those parties are and if they have counsel.

16 MS. BALL: Your Honor, it's Jasmine Ball from  
17 Debevoise and Plimpton for Side A.

18 THE COURT: Yes.

19 MS. BALL: We are happy to provide Mr. Hurley with  
20 the list.

21 THE COURT: Okay. And, Ms. Ball, do you represent  
22 any of these people?

23 MS. BALL: Yes, we do.

24 THE COURT: Okay. So --

25 MS. BALL: And we can pass on the message that you

1 requested that we pass on.

2 THE COURT: All right. So then I'm going to bury  
3 a little bit what Mr. Hurley said. I think the discussions  
4 should first take place between him and on your end someone  
5 at Debevoise, and on Side B end somebody either at Milbank  
6 or Joseph firm. Because, frankly, I think your efforts to  
7 resolve what would be a reasonable request considering not  
8 just relevance but burdensomeness. And, frankly, again, I  
9 am concerned about the cost here. I don't think it really  
10 makes sense to get confirmation that someone who is a ten-  
11 year-old really would have anything -- that there would be  
12 any real benefits of getting anything from them. And then  
13 you can talk with individual lawyers where the work's  
14 already been done. And hopefully they will see the light  
15 that they shouldn't be going to their clients to get a  
16 better deal. Particularly since I think I've laid out what  
17 I think is the proper subject and scope of this type of  
18 discovery.

19 MR. HURLEY: Thank you, Your Honor.

20 THE COURT: So I think that discussion should  
21 happen very early next week. And I would like -- rather  
22 than getting a revised request, I'd like the parties just to  
23 sit down and go through what they think should be covered.  
24 And then you can give the request, and hopefully it will be  
25 consistent with what you all agreed upon.

1           For example, I don't think at this point it makes  
2           sense to get detailed financial information from all of  
3           these people. When you have detailed financial information  
4           from other people that shows that they can pay and they were  
5           the immediate transferee, why you would need detailed  
6           information from subsequent transfers, for example.

7           MR. HURLEY: Your Honor, with this group of  
8           people, the committee has shown in the past a willingness to  
9           offer compromise in terms of scope.

10          THE COURT: Okay.

11          MR. HURLEY: We think we can get a counter, but  
12          we'll still be willing to do that. I apologize for being  
13          dense, but will a list be provided of the covered parties?  
14          Because that would be helpful for us to --

15          THE COURT: I think both counsel said yes.

16          MR. HURLEY: Thank you. Okay.

17          THE COURT: Okay. Is there anything else?

18          MR. HURLEY: So that only brings us back to  
19          redaction, Your Honor. And it may be that there's no  
20          controversy there. I already gave our view, assuming that  
21          there aren't going to be -- no documents are going to be  
22          redacted from outside professionals, the committee doesn't  
23          have a concern. And I think maybe that's the case. But  
24          obviously if there are others on the phone that have a  
25          different view of how it's going to work, you know, we need

1 to know that.

2 THE COURT: Okay. Well, I think the silence is  
3 your answer.

4 MR. HURLEY: Yeah, it sounds like it.

5 MR. JOSEPH: Yes, Your Honor. Gregory Joseph for  
6 Side B. We understand that the responsive documents will be  
7 provided to outside professionals without redactions, which  
8 we'll actually expedite it since we won't need a redaction  
9 log.

10 THE COURT: Right. Exactly.

11 MR. JOSEPH: Agreed.

12 THE COURT: All right, very well. So I think  
13 we're done on this. Obviously, I stand ready if for some  
14 reason some disagreement emerges out of this. But I think  
15 the record's pretty clear, and there is in fact a record of  
16 this, and you can go and check it.

17 The last point I'd like to say is that I actually  
18 believe a lot of information has been provided. I fully  
19 appreciate that the creditors here need material due  
20 diligence to support the plan structure that has been  
21 proposed. But I think it's always important to focus on the  
22 two aspects of that due diligence. One is as to avoidable  
23 transfer issues and claims that the Debtor might have, and  
24 that other is on the third party release issues. And at  
25 some point the information process needs to stop because

1 you're going to reach the point of diminishing returns in  
2 terms of the cost versus the value. We're not there at this  
3 point.

4 I am pleased that the parties have been able to  
5 reach agreement after already I think a considerable amount  
6 of information that at least enables parties to perform due  
7 diligence on a major portion of the issues before them. So  
8 I think that the schedule as laid out works for the rest. I  
9 trust that the parties are going to continue full-bore on  
10 the mediation that they're engaged in and that this should  
11 not slow that up. But that as far as overall plan support  
12 is concerned, the remaining discovery that we've just gone  
13 through needs to happen.

14 So unless there are any more questions, I think  
15 that concludes today's hearing.

16 MR. HURLEY: Thank you, Your Honor.

17 MR. JOSEPH: Thank you, Your Honor.

18 THE COURT: All right, very well. Thank you. So  
19 I'm going to sign off now, which will end the transcript.  
20 Have a good weekend, everyone.

21 (Whereupon these proceedings were concluded  
22 at 4:45 PM)

23

24

25



C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.

A handwritten signature in dark ink, reading "Sonya M. Ledanski Hyde". The signature is written in a cursive, flowing style.

Sonya Ledanski Hyde

Veritext Legal Solutions

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Date: May 5, 2020

[& - accountant]

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